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THE UNITED STATES AND WORLD ORGANIZATION

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On what conditions should the United States enter a world organization for the maintenance of peace? Viewing the question broadly, should not the United States enter world organization upon one condition, namely, that the organization give promise of the utmost achievement in the maintenance of peace? Unless we are prepared to repudiate the avowals of our statesmen and reverse what is perhaps the oldest and most fundamental tradition of our foreign policy, can we consistently insist upon any other condition than this one?

A good deal has been said of late about the "American idea" in international relationships. It has been suggested that the "American idea" was defined in Washington's farewell address, in the Monroe Doctrine, or in America's participation in the peace conferences held at The Hague. It seems evident, however, that this involves a confusion of the idea with its occasional manifestation in action. If there is any one outstanding "American idea" which has inspired our foreign policy from the beginning—any quintessence of principle which may be derived alike from the first neutrality proclamation, the farewell address, Monroe's message, Hay's pronouncement for the open door, or America's participation in the conferences at The Hague—that idea is the maintenance of just and honorable peace.

If peace has been our loadstar, expediency has been our guidepost. One hundred and twenty-five years ago, in the year of Washington's farewell address, "our detached and distant situation" made a policy of aloofness the most effective way of maintaining peace in the western world. One hundred years ago, when the political stage was being set for Monroe's epoch-making message, the governmental systems prevailing elsewhere were "essentially different . . . . from that of America" and any attempt to extend such systems to the western hemisphere would have been "dangerous to our peace and safety." At the end of the century, on the other hand, Secretary Hay found it the part of wisdom to "act concurrently with the other powers" in protecting interests and restoring peace in China. And only recently "the utmost practicable coöperation in counsel and action" with the states then at war with Germany was thought necessary to "vindicate the principles of peace and justice in the life of the world." While the aspiration for peace has been manifested in each great pronouncement, the measures taken have been wisely determined by time and circumstance.

It seems a mere truism to say that time and circumstance are now compelling us to place new emphasis upon the importance of world organization. The world needs peace and security for peace as the world has never needed it before. Nor is this a circumstance which the United States can safely ignore. The progress of events has been irresistibly "interweaving our destiny" with that of the rest of the world, so that the world's need has become our need, and from motives generous or selfish, as you please, we must view the problem very much as the rest of the world is obliged to view it. In the light of these reflections, should we not reformulate the question and inquire, What sort of world organization promises most in security for peace?

There is at least one consideration which should never escape us. The organization of the world which promises most in security for peace will be neither the state of nature nor the superstate, neither Hell nor Utopia. If the idea of an international state of nature was conceived as the beatification of chaos, it has become in the modern world a monstrosity of the imagination.

In the place of chaos there has evolved a vaguely defined and somewhat protoplasmic organization of the international community. This must provide the essential groundwork. The world organization of the future, far from resembling Utopia, must consist of "a duller and heavier structure placed logically upon the foundations of the existing system."

It is possible, of course, to build upon the existing foundations and yet choose wisely or unwisely in planning the superstructure. There are those who believe that we are confronted in this respect with a choice of far-reaching import. It has been asserted that the alternatives are an association of nations, on the one hand, and a confederacy of nations on the other. It has been urged that the idea of friendly and more or less informal association was exemplified in the Pan-American conferences and the peace conferences at The Hague, while confederacy finds expression in the League of Nations. I would like to submit, in the first place, that these alternatives are by no means so sharply defined and mutually exclusive as seems to have been assumed, and in the second place, that in so far as they are mutually exclusive, there should be no real doubt about the choice which the United States is required to make.

The alternatives are neither well defined nor mutually exclusive. Consider the idea of association among nations as exemplified in the Hague peace conferences. Such conferences are interesting and important phenomena, but they are only a part of the picture. Indeed, we have achieved much more in the way of world organization than any study of such conferences can possibly disclose. The Hague conferences, for example, made no contribution whatever to international administration and were in no definite way associated with its development. And yet the growth of administrative unions was undoubtedly one of the most significant developments of the past half century. It is noteworthy that the United States took an active and influential part. Again, by way of providing for the peaceful settlement of international disputes, the Hague conferences created the so-called Permanent Court of Arbitration. In the recent recrudescence of pessimism, this institution has come to be regarded in

some quarters as a unique expression in world organization of the association idea. It seems to have been forgotten that in the conferences which formulated the plan the principal merit claimed for it was the superiority of something over nothing. Has it also been forgotten that the best effort of the Second Hague Conference was spent upon an attempt to formulate a plan for a real international court of justice and that this effort was initiated and supported vigorously by the government of the United States? It is well known that the effort failed because of inability to reach an agreement upon the court's composition. It may be confidently asserted, nevertheless, that in preparing the way for future agreement this abortive attempt was really the Second Conference's most substantial achievement. Finally, the Hague conferences afforded an opportunity for the friendly discussion and adjustment of political questions. It is urged that we should revive the conferences and perpetuate them. This is a proposition entitled to consideration on its merits. In the meantime, however, it should be remembered that more was actually done for the maintenance of peace in the past century by another type of conference in which participation was more limited, procedure less formal, and achievement more relevant to the world's immediate need. What survey of progress made in the development of world organization during the past century can neglect the much maligned concert of the great powers, in which the United States before the World War had begun to take an active interest, with which it had on occasion consented to coöperate, and which it has recently summoned to our own capital to consider certain of the more pressing international problems of the present day. Let us complete the picture. Let us regard all that the nations have achieved through generations of struggle as a somewhat coherent though primitive organization. We see a remarkable accumulation of administrative institutions which has evolved more or less spontaneously to meet international needs. We see fruitful experiments with arbitration, arbitration dignified in the Hague Tribunal, and the foundations laid for an international court of justice. We see international conferences innumerable, including those which have been broadly represen-

tative, and which have debated much but settled little, and also those which have wielded power, though sometimes, it has seemed, without much regard for justice. If we were to frame a constitution for this complex organism, expressing accurately its true significance, it is evident that the constitution would have to provide for something much more substantial and complete than intermittent and friendly association.

If those who urge the idea of association as opposed to confederacy really mean that we should revert to Hague arbitrations, Hague conferences, and the like, instead of going ahead to build more boldly upon existing foundations, there should be no uncertainty about the decision. The time has surely come when it will be advantageous at least to coördinate the sprawling growth of international administrative institutions under more systematic and centralized supervision. Nor is there any reason of expediency or principle why this should not be done. The time has come also when the nations require an institution more convenient, more permanent, more of the nature of a court than the very imperfect contrivance devised at The Hague and known as the Permanent Court of Arbitration. This so-called Permanent Court is not permanent. It is not a court. It provides only a transitory forum which is too unwieldy and expensive for the less important cases. It has no continuity, no history, no record of past performance, and is too inconstant for many of the more important cases. Leaving out of calculation the years of war, the so-called Permanent Court of Arbitration has decided an average of less than one case a year. A few of its awards, as in the Pious Fund or the Savarkar case, would have been creditable to a court of justice. Others have presented the characteristics of arbitration, notably the North Atlantic Fisheries award, giving Great Britain two big fishes and the United States five little ones, and the Casablanca award, deciding that whereas conflict results from the collision of two incompatible forces the German consular authorities in Morocco could not be blamed for a grave and manifest error. Let the system of arbitration be retained for the settlement of controversies in which arbitration is appropriate. But let us have also a court before which may be made a very

humble and a very modest beginning in developing the processes of international justice. Finally, has not the time arrived when the United States ought to be more candid about its intention of coöperating, not only in regional conferences like the Pan-American, and general conferences like those held at The Hague, but also in conferences like the one held recently at Washington in which the great powers concert together. It is certain that the United States will participate in many assemblies and councils of both types. Experience has demonstrated that each has a useful function to perform as a peace-promoting agency in international affairs. Then why not be candid, in the interest of simplification and certainty, and enter into an agreement with other nations for the summoning periodically of conferences of either sort linked together by the useful fiction of continuity. Why not take the system of international conferences which has grown up in the past and make it more efficacious by giving it a plan. If this is the difference between association and confederacy, then why not accept confederacy.

There are practical disadvantages, it must be admitted, in any program which aims to create a more formal association or confederacy among nations. A program always excites quiescent issues. Difficulties which time is competent to remove in an evolutionary process become acute and sometimes insurmountable. Attrition is easier than the grand strategy.

As soon as it is proposed that nations organize their association more systematically, serious difficulty is encountered in determining the measure of each nation's participation. How shall we apportion representation in council, court, or conference? How shall we distribute votes if there is to be voting, or expense if there is to be a budget? There are great powers and small powers, strong powers and weak powers, powers which are advanced in the civilization which is characteristic of the twentieth century and others which are backward. The great powers will not submit really important decisions to a tribunal or conference which may be dominated by the small, weak, or backward states. The lesser states know all too well the dangers which inhere in the predominance of the great. Upon what basis is it possible to

constitute an organization including sixty or more nations so as to satisfy the powerful, safeguard the weak, assure adequate representation to every factor, and yet attain an organization which is wieldy enough to serve some useful purpose in providing security for peace?

The difficulty becomes more evident as we consider the extraordinary group of empires, nations, states, and quasi-states with which we have to deal. There are between sixty and seventy political entities in the world today (not including Andorra, Lichtenstein, Monaco, and San Marino) which may fairly claim some consideration in any program of world organization. These entities divide the earth among themselves with little regard for the cartographer's convenience. One is a mere pin point of color. Another covers a great portion of the map with red or brown or blue. Ten have a territorial area of upwards of a million square miles, while twenty-eight reckon area in six figures and twenty-nine reckon it in five figures. If territorial area were to be accepted as a standard by which to measure the right to participate in world organization, Japan might rank as low as twenty-third or twenty-fourth, being outranked by such countries as Abyssinia, Colombia, Persia, Peru, and Venezuela. Diversities of population are quite as extraordinary as diversities of area. The British Empire as a whole claims over 440 million. China claims 400 million and probably has at least 325 million. India claims more than 300 million. Including India as a separate entity, there are five countries which have a population well over 100 million, while figures for the French empire fall but little short of that number. On the other hand, seventeen countries, not including the French colonial empire, compute population in eight figures, twenty-eight compute it in seven figures, and ten compute it in only six figures. Estimates of area and population suggest only the more striking differences. There are maritime states and inland states, states which are dependent upon overseas commerce and others which are nearly self-sufficient. There are sea powers, land powers, and states of no military power at all. There are states or quasi-states united loosely in imperial union, and others which admit no ties except those of

the great community. There are states which live in the penumbra of another's hegemony, and quasi-states under guarantee, protection, or mandate. There are states—but why elucidate the obvious? The problem of formulating a satisfactory scheme of participation in world organization is one of unusual difficulty.

Experience indicates, nevertheless, that the problem may be solved. There are several factors of which account will have to be taken. Perhaps the most important of these factors is the distribution of the world's population. Prepossessed by tradition, we have been inclined hitherto to make too much of the state, the Great Leviathan, and not enough of humanity. We have been unmindful at times of the principle that organization and law are justified only as they promote the welfare of the human beings whom they are intended to serve. International organization and law must be justified by the same test. This means that organization must in some degree represent and be responsive to human beings who inhabit the earth. The practicability, the necessity indeed, of taking this factor into account has been indicated in the spontaneous development of international conferences. While we have had regional conferences and general conferences in which many states participated equally, really contentious issues have usually been referred to smaller conferences in which the great powers were dominant. It is noteworthy that the great powers today are included among the nine countries which rank highest in population and that the other countries included are China, India, Russia, and Germany. Population is an important factor, but not the only one of which account must be taken. A numerous people with an imperfectly developed economic or political organization cannot hope to exercise as much influence in world affairs as a less numerous but more coherent people. Economic or political upheavals may temporarily eclipse international power. It is apparent that we must also give attention to what may be described, for want of a better term, as qualitative criteria.

From brief suggestion of a feasible approach to principle, let us turn to consider the principle's application in a plan. When the time comes to draft a plan of organization, can we possibly

do better than to make two series of conferences an outstanding feature of the proposed organization? We may provide for periodic conferences in which all nations participate equally and also for conferences in which the nations greatest in population and influence shall have a majority of the representation. We may provide that these two series of conferences shall function concurrently. The idea is an old one which has been urged many times by illustrious advocates. It has been approved in the recent treaties and embodied in the League of Nations. More recently, the existence of such a twofold representation in the league has made it possible, for the first time, to secure an agreement among great states and small states on a plan for a permanent international court of justice. As the brief history of the Council and Assembly of the League has already demonstrated, the bi-conference plan does not resolve all difficulties. But it does provide a reasonable basis for compromise. It has a real foundation in the experience of history. And by making it possible to organize the processes of peace it prepares the way for more useful developments in the future.

Another difficulty results from the desire to invest world organization with power. It is said that international law must have sanctions, that we must have an organization "with teeth." This is an aspect of the quesion about which reasonable men may disagree. It is my own opinion that we are in danger of confusing a vague ideal with the immediate opportunity. There is no conceivable kind of world organization, with or without power, which can certainly maintain peace. The German confederation did not maintain peace among its members; neither did the federal constitution of the United States; neither has British imperial union. Who can view realistically this distrustful and distracted world and hope that world organization may accomplish more? Is there not grave danger, indeed, that world organization incorporating the sanctions of affirmative covenants, joint force, or the boycott may cause more irritation than it allays and may actually be provocative of war. This is the most serious defect in the plan of the Paris treaties. Not content with negative covenants and moral sanctions, the framers sought to include

affirmative covenants and physical sanctions. And to cap the climax of that scheme's iniquities, they compromised the whole plan by linking it up with an impossible settlement, actually giving the league more power to enforce the settlement than it has to preserve peace. Disentangled from the European treaties of peace, its covenants construed as self-denying and its guaranties as voluntary, the League of Nations presents an altogether admirable scheme of organization. It is a great misfortune that the United States has not found a way, safeguarded by adequate reservations, to participate in its councils and in the new court of justice which it has just created. We cannot hope to maintain peace either with or without affirmative covenants and physical sanctions, until the slow processes of evolution through education have taught us to think and act differently in international relationships. The immediate opportunity is a more modest one. By organization we may conserve what has already been achieved. The importance of this is not always appreciated. We may also equip ourselves much more effectively to meet current international needs. And, above all, we may direct and hasten the processes of evolution by strengthening and improving the foundations upon which the superstructure of peace must eventually repose.

It has been my purpose to suggest that world organization ought to be grounded solidly upon the foundations laid in past experience, that this has been satisfactorily achieved in the structure of the existing league, but that world organization for the present should be without affirmative covenants or sanction of physical force. Such a program is conservative. Is it worth effort and sacrifice? It seems to me that it is not only worth effort and sacrifice, but that it offers what is perhaps the greatest opportunity for constructive achievement in international affairs since the time of Grotius.

Consider the effect of such an organization upon the development of international law. It will be agreed, no doubt, that a conspicuous imperfection in international law has been its unreality—the impractical and unsubstantial character of many of its rules. This has been due largely to the circumstance that of

all formulating agencies the juristic writings have been easily the most influential. There has been nothing in international law that is really comparable to the influence of judicial decisions, administration, and legislation upon the growth of municipal law. Modern developments in international organization have begun to exert faintly an influence which is somewhat comparable. Is it too much to hope that a program of world organization may accelerate and strengthen this tendency and so make it possible eventually to redeem the law of nations from its unreality.

It will be agreed also that another characteristic defect in international law is its confusion at many points with the uncertainties and intrigues of diplomacy. How much depends, for illustration, upon the anomalous rule in regard to recognition. By withholding recognition a new community may be deprived, with disastrous effect, of the status to which it ought to be entitled, or an old state may be partially outlawed by refusing to recognize a change in government. And the decision or decisions in each instance may be made in secret in the foreign offices of the more influential powers. This, from the legal point of view, is an abominable situation. With the nations organized, there need be no justification for its continuance. In this and other respects it may be possible through organization to develop clearer delimitations between the province of international law and the domain of the diplomat. Finally, who would deny that the gravest of all deficiencies in a very imperfect system has been the meager development of peaceful remedial processes and the remarkable emphasis placed upon war. World organization should change the emphasis. Instead of peace conferences devoted to the laws of war, we may hope for peace conferences concerned with the laws and problems of peace. The way will be prepared for the development of the most undeveloped and most important part of the international system.

World organization promises no millennium, but it does promise new and greater opportunities for progress in the maintenance of peace. By the fundamental traditions of its foreign policy and by every consideration of self-interest, the United States is required to take a helpful and an influential part.

MINISTERIAL RESPONSIBILITY VERSUS THE SEPARATION OF POWERS

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Formerly political scientists were inclined to criticize the American theory and practice of the separation of powers in the federal and state governments and to commend instead the cabinet or parliamentary form of organization. Thus Walter Bagehot, Sir Henry Maine, Woodrow Wilson, Frank J. Goodnow, along with many others, pointed to the advantages of cabinet or parliamentary government over presidential government as developed in the United States. A consensus of opinion was expressed by Wilson who said, "As at present constituted, the federal government lacks strength because its powers are divided, lacks promptness because its authorities are multiplied, lacks wieldiness because its processes are roundabout, lacks efficiency because its responsibility is indistinct and its action is without competent direction."[1] At one time the American plan of separation of powers was compared unfavorably with the French system in which governmental powers were divided into two branches—a policy-forming branch or "Politics" and a policy executing branch or "Administration."[2] On another occasion the tripartite system of the separation of powers was charged with responsibility for much of the political corruption prevalent in American politics.[3] The same theory of separation has often been condemned as requiring too many checks and balances and as involving a do-nothing policy for legislative and executive officers.[4] It has been not uncommon for practical statesmen, for teachers of government and others inter-

[1] Wilson, *Congressional Government*, p. 318.

[2] Goodnow, *Politics and Administration*.

[3] Ford, *Cost of the National Government*, ch. VI.

[4] Howe, "The Constitution and Public Opinion," in *Proceedings* of the Academy of Political Science (October, 1914), p. 7.

ested in public affairs to recommend the adoption of a modified form of cabinet government for federal and state governments in the United States.

Although the lack of direct connection between the legislative and executive departments of the federal government has resulted in such obvious weaknesses and incongruities that many public men have urged important modifications of the present arrangements, and although the same conditions were, in part, responsible for the impotence of the federal government to deal effectively with the problems of peace and reconstruction, political developments of recent years have tempered somewhat the opposition to the American plan of separation of powers and have dulled the enthusiasm of the advocates of cabinet government. For example, it was freely predicted in England that even before the war, cabinet government was breaking down and that something of a radical reorganization was necessary. The cabinet, said Lord Lansdowne, "became an unwieldy body. . . . . If only a few of them took part, the cabinet ceased to be representative. If many of them took part, the proceedings tended to become prolix and interminable, and it is a matter of common knowledge that reasons of that kind led to the practice of transacting a good deal of the more important work of the government through the agency of an informal Cabinet."[5] It is a matter of common observation that the weaknesses of cabinet government revealed before the war were greatly augmented and resulted in an almost complete breakdown of the cabinet system during the war. The gradual evolution of the inner cabinet and the construction of an imperial cabinet left comparatively little of the former system in effect in the last years of the conflict. In the light of this experience Englishmen have seriously considered whether, with the former cabinet system restored, it would not be advisable to provide that in time of war cabinet government should give way to a dictatorship modelled somewhat after the presidential office in the United States.[6] In other respects Englishmen have been

[5] Marriott, "The Machinery of Government," in 88 *Nineteenth Century*, 1086.

[6] Dicey, "A Comparison between Cabinet and Presidential Government," in 85 *Nineteenth Century*, 85.

considering some transformations of cabinet government which would bring their governmental machinery nearer to the form prevailing in America.[7]

Cabinet government, it is well known, has not worked satisfactorily in France, and some French writers have been uncompromising critics of the system. But these criticisms savored of an academic flavor until the trials of war and reconstruction emphasized anew the defects of this form of organization. From these experiences as well as from the trend of politics prior to 1914, Frenchmen have come to favor two proposals which would inaugurate in France a separation of powers modelled in certain essential respects after the American plan. The first of these proposals, expressed in the language of President Millerand, is that the nation's will "manifested by the voice of its representatives, needs, in order to be accomplished and respected, a free executive power under the control of Parliament."[8] It is the express intention of the newly elected president to participate of his own initiative in the foreign affairs of the nation and to exercise in other respects a "free executive power," a policy which, if carried out to any considerable extent, will have a tendency to change the government of France in the direction of presidential government. The other proposal, also referred to in the address of President Millerand, is the establishment of an independent judiciary with the power to review legislation along lines similar to the practice of American courts. Those supporting this proposal are in control of the French government, and it is thought to be only a matter of time until either by amendment to the constitution or by judicial interpretation based on the former declarations of rights French courts will be exercising the power of judicial review of legislation.[9] With a free executive power

[7] Cf. *Report* of the Machinery of Government Committee, Lord Haldane chairman (1918).

[8] President Millerand announced in this connection that he intended to select premiers who would carry out his policies, and thus far he has managed to retain the dominant position.

[9] See Lambert, *Le Gouvernement par les Juges et la Lutte contre la Législation Sociale aux États-Unis—L'expérience Américaine du Controle Judiciaire de la Constitutionalité des Lois*, (Paris, 1921).

and an independent judiciary each modelled largely after the American system, the French government will no longer have real parliamentary government.

The French system was formerly praised in America as involving a combination of the legislative and executive departments in the formulation of governmental policies and the establishment of a system of legislative supremacy.[10] Administration, or the carrying out of the governmental policies, was in this system exercised by administrative officers with the aid of the judicial department which was regarded as a branch of the administration. More recently a French authority[11] has called attention to the fact that leading Frenchmen look with admiration upon the American system with its tripartite division of powers, legislative, executive and judicial, along with the principle that judges shall pass on the constitutionality of legislative acts which establishes a doctrine of judical supremacy or government by judges.

The political thinkers in any country are likely to be conscious of the defects of their peculiar institutions and to view with admiration the practices of foreign governments with which they are on the whole less familiar. It seems that a superficial examination of the French system of government by Americans frequently leads to an admiration of that system and the conclusion that it is superior to our own. So the leaders of French political thought with but a slight knowledge of the practices of American institutions are disposed to advise their fellow countrymen to adopt the American theory of the separation of powers. The observation that Frenchmen are seeking to adopt certain features of the American plan of separation of powers; that Englishmen would like to provide an arrangement similar to the American presidential system to meet the extraordinary conditions of war; and that many Americans look to England and France for guidance to remedy the defects of their plan of separation of powers seems to point to the fact that our theories and traditional conceptions on this subject need to be revised.

[10] Goodnow, *Politics and Administration.*
[11] Lambert, *op. cit.*

The principle of the separation of powers in practice has resulted in three points of view and methods of interpretation which have led to quite different results. These are: the French theory, the English theory and the American theory.

Although the government of France was affected by the eighteenth century theories of the separation of powers and particularly by the proposal of Montesquieu relating to the separation of powers, the interpretation of these eighteenth century theories led in France to the proposition that courts ought not to interfere in the exercise of legislative powers and are not privileged to suspend the execution of the laws. The French have, therefore, denied to the courts the right and duty of passing on the validity of legislative acts, claiming that this would be an interference with the independence of the other departments. Under the present constitution France has continued this interpretation and has adopted parliamentary government, with the result that France is governed under what is known as legislative supremacy. But owing to the fact that the French system of government is based on the Roman civil law, and that Frenchmen are accustomed to methods and practices whereby executive and administrative officers perform a much larger part in the making and enforcing of law than is customary in Anglo-American countries, the legislature is much more limited in its scope of action and the administration consequently enlarged in its functions. In fact, in all countries which have adopted as a basis for government the Roman civil law, executive and administrative officers participate to a much larger extent in the forming of government policies (with almost complete initiative in the framing of laws and in determining the details of administration), than is customary either in England or the United States. Although the legislature, then, along with the principles of parliamentary government, is supreme in France, its supremacy applies to a more restricted field than in Anglo-American countries.

In England there has never been a clear and well-marked division of powers such as was suggested by Montesquieu. Since the development of parliamentary government and the assurance of legislative supremacy with the dominance of the House of

Commons, legislation and execution have been combined to such an extent that no strict separation between these functions is practiced in the English government. The courts, although in final analysis subordinated to the functions of making and applying the law, have in England, under what is known as the rule of law, a semi-independent status. They are privileged unless specifically denied this power by acts of Parliament, to restrict, limit and under certain circumstances to set aside the acts of executive officers.[12] Thus, although the courts are not privileged to declare legislative acts invalid, they may, by the process of interpretation, have a controlling effect on the application of various branches of law in England. This exception does not seriously affect the general principle that England is ruled under legislative supremacy with the combination of legislative and executive power vested in the cabinet and prime minister. The English system of government is a government by a few—an executive committee—under an arrangement of direct responsibility with the lines of control generally visible and open to the constant pressure of public opinion.

The theory of the separation of powers which was evolved in the United States assumes three well-defined and more or less independent organs of government. Each of these organs is regarded as within its sphere to be beyond the control of the other organs. Each is assumed to have certain discretionary rights, privileges and prerogatives. Since the powers and duties of the legislature and executive are usually more clearly defined, and since it is the duty of the courts, as developed in American practice, to define the limits of these authorities, the judiciary becomes the guardian of the liberties and privileges of the citizens when the executive or legislature exceeds the powers outlined in the fundamental law. The American principle of the separation of powers has prevented the combination of the legislative and executive departments which is characteristic of most European governments.

[12] Review of *The Case of Requisition*, Scott and Hildesley, 21 *Colorado Law Review*, 833.

A marked difference between the American and the English-French systems arises from the fact that under cabinet government the prime minister and the other members of his cabinet may be members of the legislature; whether members or not they have the privilege of participating in the activities of the legislative body. In fact the ministers are expected to prepare legislation affecting their departments, to present the measures to the legislative body, and to defend them when under consideration. The peculiar theory adopted in the United States has prevented this arrangement, with the result that with the exception of the reading of the annual message to Congress by the President, the President and his cabinet officers cannot visit and participate in the proceedings of Congress and can only deal with the legislative body in an indirect way by appearing before committees, by sending communications or by trying to influence Congress through the press or by patronage and other roundabout methods. A similar practice prevails in the state governments. In the American system the lack of unity in action and execution renders the processes of government invisible and makes the lines of responsibility indirect and covert.

It is worthy of note that the familiar independent-unit close-compartment plan of separation was not incorporated in early state constitutions, where the legislature was given a dominant position with the executive and the courts subordinate. Neither was the theory followed in the general plan of the national government which intermingles the powers at many points. The failure to incorporate a definite theory of separation in the Constitution left the way open, President Washington thought, to consult the Senate freely as an executive council. The President also felt at liberty to secure the advice of the judges in advance of the formulation of government policies. Rebuffed in both efforts owing to a curious notion of privileges and prerogatives of legislators and judges, Washington was obliged to accept a view of separation of powers quite different from what he conceived the Constitution to establish. Similarly the first state constitutions neither made definite provision for an independent judiciary nor included any obstacles to free consultation of executive officials

with legislative departments. It was not then the laws and constitutions of the eighteenth century which formally established a tripartite system which renders coöperation extremely difficult, but the peculiar concepts of independence held particularly by those in legislative and judicial positions. This observation has a pertinent relation to the proposals for reform to which reference will be made later. For the purposes of this discussion the English and French theories may appropriately be considered together since both involve the essential features of cabinet government as constrasted with the presidential system of the United States.

The English-French system of cabinet government with the unity of governmental powers has been adopted extensively in Europe and elsewhere. It is now in operation in the self-governing colonies of Canada, Australia, and South Africa, and in Belgium, Italy, France, Netherlands, Spain, Norway, Chili, and has been partially applied in Denmark and Sweden. It has recently been incorporated in a modified form in the newer constitutions of Europe, such as those of Germany, Czechoslovakia, Poland and Jugoslavia. The presidential system, as it prevails in the United States, was accepted by countries like Japan and Germany before the war, and is commonly applied in Latin-American countries. Executives in these countries are given greater authority than is allotted in the countries with cabinet government. So far as information is available, with the exception of Chili and, to a limited extent, Peru, the Latin-American countries give the President as executive an independent position. In Venezuela, for example, where the constitution obviously attempts to establish parliamentary responsibility, this provision has in practice been ignored.

Intermediate between cabinet and presidential government is the Swiss system, which places the executive authority in an executive board selected by the Federal Assembly and required to work through and with the assembly but selected for a given term and not subject to removal by a vote of lack of confidence. Members of the federal council are usually members of one of the chambers and the relations between the councillors and the legislature are very intimate. As in other European countries

the councillors as ministers take the initiative in preparing measures for consideration by the houses. The plan of the Uruguayan constitution[13] also creates an independent and responsible President with powers similar to those of an American President, particularly in relation to foreign affairs, police, etc., but it establishes a National Council of Administration composed of nine elected members who have control over branches of the administration not granted to the President, such as public instruction, public works, labor, industries and agriculture, charity and sanitation. The council prepares the budget, supervises elections and renders an account of all its activities to the legislative assembly. Councillors and members of the ministry may participate in the sessions of the assembly but may not vote. Ministers are held responsible for their own acts. The President and ministry are given the right to present bills to the chamber or to offer amendments to bills under consideration.

The new Peruvian constitution[14] likewise sets up an independent executive on the American plan but requires that the acts of the President be signed by a minister to give them effect. With the approval of the President ministers may present to Congress proposals for laws which they deem desirable. They may take part in the debates but may not vote. In a certain measure ministers are jointly responsible for general acts and individually for the acts connected with their departments. Ministers may be forced to resign by vote of lack of confidence in either house of Congress.

The question of the separation of governmental powers and their distribution among the various branches of government remains, then, as one of the foremost issues of modern politics. A number of countries are in the process of adopting some form of cabinet government, whereas others are inclined in part, at least, to introduce certain features of the American presidential system. Each system appears to have certain advantages which appeal to the proponents of the other system. It will be well, therefore, to

[13] Cf. 1 *Southwestern Political Science Quarterly*, 95.
[14] *Ibid.*, II, p. 106.

consider some of the issues which have arisen in connection with the distribution of powers and to discuss briefly their effect on the organization and administration of modern governments.

Among these issues are the growth of executive powers and discretion, the decline of legislative authority in relation to the making and adoption of the budget, the necessity of government by permanent, professional officers with the consequent effect upon the making and execution of the laws, and the distrust and dissatisfaction with present legislative bodies. A brief consideration of each of these will render somewhat more specific a consideration of the present situation in relation to ministerial responsibility and the separation of governmental powers.

One of the striking facts with regard to the development of modern governments is the extent to which executive powers have been increased, and executive discretion in the administering of law has been enlarged. This process has been carried to its greatest extreme, of course, in connection with the war powers, under which government by law and by rule became in large part government by the wish and discretion of administrative officers and military leaders.[15] But it is not only in time of war that this tendency has become apparent, for the modern tendency to place authority in the hands of the heads of departments with power to issue rules and ordinances, and to create various boards and commissions chiefly executive in character, but with powers that are legislative, executive and judical in scope, all tend to emphasize this fact, namely, that modern governments are going in the direction of greatly enlarged executive powers.[16]

A keen observer of the tendencies in modern governments has recently pointed out that so far as the American governments are concerned, we have passed through three periods: first, one in which there was a tendency to place great responsibility and authority in the hands of legislative bodies; second, when the legislative bodies declined in power and esteem and many limita-

[15] See Willoughby and Rogers, *An Introduction to the Problem of Government*, pp. 95ff., for a brief summary of the modifications of the rule of law in England during the World War.

[16] Cf. Fairlie, "Administrative Legislation," in 18 *Michigan Law Review*, 181.

tions were placed upon the exercise of powers, the judiciary, as the protector of constitutions and the guardian of these limitations, was given extraordinary powers and duties; third, when legislative supremacy and judical supremacy have declined and instead we find ourselves in the process of elevating to an extraordinary place the executive departments of the government. No doubt the process of shifting from one department to another will vary according to the peculiar times and conditions through which a nation passes, yet the fact remains that the theory of the separation of powers in its former sense of real separation and independence appears to be applicable only to a primitive and undeveloped society. The modern complex and greatly expanded functions of government require an enormous extension of the executive functions and a consequent limitation by comparison of the functions of the other two departments.

The passing upon the budget which involves the voting of taxes, and the appropriation of public money was once regarded as the very essence of the power of legislative assemblies and the fundamental basis of representative government. To Edmund Burke, liberty from a governmental standpoint inhered in a large part in the control of the purse strings. But the situation has changed, and the observation of Burke appears no longer to be applicable. The voting of appropriations and the levying of taxes by legislative bodies alone have resulted in what is commonly known as "pork barrel"methods, log rolling, and governmental extravagance on a scale heretofore unknown. The recognition of this weakness in legislative-made budgets has in many countries resulted in the turning over of this function to the executive and the placing of the responsibility for the making of the budget upon the ministry: the chief function of the legislature becomes the turning of the light of publicity upon the ministerial conduct. And even the function of publicity is being taken over by the press and other agencies. This practice has been carried to its farthest extent in England, where the cabinet makes the budget and where the House of Commons has in practice given up its function of making any changes in the budget as prepared by the ministry. The tendency has been to weaken

the authority of the legislature in this field and to strengthen the position of the executive wherever an attempt has been made to increase governmental efficiency and to reduce the extravagance of legislative bodies in which individual members are dominated by private and local interests and log-rolling methods inevitably prevail.

The extraordinary enlargement of governmental functions and the increasing complexities of the problems involved in public administration have rendered it necessary to modify seriously many of the principles and practices applicable to primitive agricultural and undeveloped societies. The complexity of governmental operations and the many technical and intricate issues concerned, have made it indispensable to secure for the operation of government a large number of specialists or professional officers. The advice and assistance of such experts, it is thought, can be secured to the best advantage when the processes of legislation and administration are combined. In practically every other government except that of the United States, either the ministers or officers connected with the government have control of the preparation of bills and their presentation to the legislative bodies. Executive initiative in this process tends to place the matter under the control of professionals who develop standards and a technic of legislation with which the American legislative product compares quite unfavorably. In England and in France there has been developed a permanent and professional class of administrators who by training and experience are qualified to deal with the increasing complexities of administration. Though the methods of securing these permanent professional administrators differ, the general result upon the conduct of public affairs is quite similar. It has been found extremely difficult to secure and make use of permanent and professional officials under a system of strict separation of powers and the independent authority of the departments concerned.

The distrust and dissatisfaction with present legislative bodies is one of the noteworthy characteristics of modern political thinking. Representative government, which was once looked to as the panacea for good government and as an indispensable

requisite of the development of democracy, is now on trial. There is a profound dissatisfaction with the functions of representative bodies in countries like England and France which have the parliamentary or cabinet systems, and there is the same and perhaps more serious dissatisfaction with legislative bodies in presidential countries such as the United States.[17] It is claimed that our representative bodies are not really representative; that certain classes only, chiefly the classes of money and property and professional interests, are represented in legislative bodies, and that the great mass of workers and other large classes are not. This objection to representative bodies is leading to a movement to create assemblies based upon industries and professions which would be given authority to deal with many of the questions relative to work, hours of labor, sanitary conditions, prices, wages and matters of this kind which are not dealt with satisfactorily by the present politically representative bodies. There seems also to be a general agreement that representative bodies are either inefficient, wasteful or corrupt, and in some instances the charge is made that all three of these weaknesses are apparent in our present legislative bodies.

These problems have brought about a reëxamination of the general organization and functions of government whether presidential or cabinet in form. Numerous reports and investigations have been made, such as the Haldane Report in Great Britian, and reports by committees on the reorganization of administration in the United States, in which the present organization of the cabinet and administrative functions and duties are criticized with suggestions for reform. A few conclusions seem to follow from the reëxamination which is under way. First, it is taken for granted that whether the government be parliamentary or presidential, there will necessarily be a government by a few, either by a president and a cabinet or by a prime minister and a cabinet. It is also conceded that an elective body can serve effectively only as a board of advisers and critics, and that for this purpose the large assemblies which we now have are cumbrous and un-

[17] See Laski, *Foundations of Sovereignty*, pp. 34ff.

wieldly; that a relatively small body elected for long terms on some plan of proportional representation to which would be selected those who are familiar with local conditions as well as with some of the essential principles and practices of government administration seems a requirement, if government is to keep pace with the growth of its functions and the increasing complexity of the conditions with which it must deal. It is also realized that governments are acquiring new and more complex functions and that a large part of the time of those connected with the government must now be given to the collection of information, in the form of investigation and research, in order that legislative and administrative officers may deal intelligently with the very difficult problems that arise.

To meet this situation, the Haldane Report included among the suggested executive departments one on research and information. Perhaps an even better arrangement would be to have research divisions and bureaus connected with all the departments and in proportion to the need of technical assistance and information. In the light of these principles the American theory of the separation of powers appears largely as a device for a policy of inaction—an excellent plan to encourage politicians to escape responsibility and to permit private individuals and corporate organizations to defy public powers with impunity. In the words of a caustic foreign critic, if the desire is to secure an effective check on radical and progressive movements, if the intention is to place corporate organizations in an impregnable position so far as government regulation is concerned, the American theory of the separation of powers is undoubtedly a well-conceived device for this purpose.[18] From the standpoint of responsible and efficient government, the separation of powers stands as an obstacle which must be removed if the government of the United States is to make progress along governmental lines and is to be prepared to meet conditions both domestic and foreign.

A large part of this difficulty could be overcome if the President and his cabinet were made directly responsible for the formulation of legislation as respects the administration, and the cabinet

[18] See Lambert, *op. cit.*, 224.

members were free at any time to appear and debate in the houses. It seems necessary, therefore, that an extreme and indefensible separation of powers in the United States, which was largely the result of interpretation, be abandoned in order to make our government more responsible and more efficient. This could be done by a mere general agreement, just as the existing theory is largely based upon the peculiar conception of officers, who were responsible originally for the interpretation and application of our constitutions. Modifications could be made through the simple process of interpretation by which they were engrafted upon early American institutions. The almost universal tendency of European nations to unite to a considerable degree the legislative and executive functions should lead us ultimately to the conclusion that our present system, a disjointed and indirect system of legislative and executive relations, should be revised.

While defects in our present system of separation of powers and lack of ministerial responsibility are apparent, it is significant that we have in our government certain advantages, such as the ready and easy concentration of power in time of war, which the leaders of thought in foreign governments would like to adopt. And the American government need not abandon the essential principles of its separation of powers. Rather should it modify its practices and procedure so as to secure ready and open access of the President and his cabinet members to the houses of Congress, and a more definite correlation of legislation and administration. This can be done without breaking down the essential features of our existing governmental order, which despite its many defects has worked fairly well. It is evident from a comparison of the cabinet and presidential governments, that cabinet government can be improved by the application of principles now made a definite part of the presidential system, and that presidential government can be improved by taking advantage of the well-known practices which have proved so successful in the countries with a cabinet government. Each has advantages which deserve continuance and development. The combination of the features of both plans is apparent in a number of recent constitutions.

Certain tendencies are particularly notable in recent constitutions. Three are marked enough to merit listing: (1) To create a semi-independent executive, but to require ministers to assume responsibility for all important political acts of the President either individually or collectively before the legislative chambers. (2) To give the ministers free access to the legislature to take part in debates, to present measures and, if members of the legislature, to vote. (3) To place upon ministers the duty of preparing the budget, and the responsibility of formulating laws and presenting them to the legislative bodies.

With a few exceptions the tendencies are distinctly in the direction of the adoption of the essential features of cabinet government with such modifications as will leave place for a President and premier each with certain distinct and independent functions. Which of the two, President or premier, will exercise the greater powers will depend to a considerable degree upon the political conditions of the country, the personality of those holding the offices and the particular influences at work favorable either to incabinet or presidential machinery.

But mere palliatives such as the making of the budget by the President and his cabinet, and the combination of executive and legislative powers largely in the same hands, though they may improve the working of existing governmental machinery will only tend to call attention anew to certain obvious facts, namely, that modern representative assemblies are failing in the performance of some of their most important functions, that the present bodies must be radically changed or give way to other forms of political organization, and that the contest to secure and retain representative and responsible governments will require as in past generations constant vigilance and increased interest on the part of political thinkers.

It seems necessary for the consideration of the problems of representative government and ministerial responsibility to bring under criticism certain well-known political ideas and traditions. With regard to the organization of government just as in the field of law, mere tinkering with political forms and organizations will not meet the requirements necessary to adapt political

institutions to modern conditions and tendencies. The leaders in political science will of necessity be required to devote more effort to the preparation of programs of reform and reconstruction involving entirely new procedure and practices and to the campaign for acceptance of these reforms as parts of the governing processes. Such reforms, as is the case with the plans for reorganization of courts fostered by various bar associations, will be adopted slowly. But the need in the field of political science with respect to radical reconstruction, both from the standpoint of legislation and administration, is equally as necessary as constructive reforms in the field of law. Half-way or temporary measures, such as the commission form of government in cities or the plan of administrative consolidation of bureaus, commissions and other administrative agencies in state governments, though they may be serviceable in the direction of more effective administration, do not remove the fundamental defects in modern government. Nothing short of a new type of legislative body and a very much changed form of executive and administrative organization, with a well worked out plan of correlation between the two departments, will render modern governments competent to meet the exigencies of present political, social, and economic life.

NEW EUROPEAN CONSTITUTIONS

IN POLAND, CZECHOSLOVAKIA AND THE KINGDOM OF THE SERBS, CROATES AND SLOVENES

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In this period during which all political institutions are being tested as never before by the searching criticism of an awakened world and by application to the well-nigh insoluble problems left by the World War, the constitutions which have been developed by the post-war states of Europe possess a peculiar interest to the student of public affairs. They are the results of the conscious effort of the statesmen of these new commonwealths to combine with the historic institutions of their own lands those features of the public law and the political practises of the older democracies which experience has proven to be workable, to be conducive of good government, and to make possible a more or less popular control over affairs of state. The product of a season when democracy is the fashion, all of these instruments are filled with rules and phrases which have a familiar ring in American ears, despite a more than occasional Gallic or native accent. As one reads that:

"We, the Czechoslovak Nation, in order to form a more perfect union, establish justice and order in the republic, insure the tranquil development of the Czechoslovak homeland, promote the general welfare of all of the citizens of this State and secure the blessings of liberty to future generations, have adopted . . . . a Constitution," it is easy to forget that the majority of the people who are to live under the institutions to be established differ as greatly from ourselves in their political background and experience as they do in language and in their picturesque national costumes. Yet the fact is that the seed of Western European

and American democracy has fallen upon new ground and may well be expected to bring forth new fruit, the development of which may be observed with profit by both the believers and the disbelievers in the universal applicability of the democratic dogma.

Of the constitutions of Poland, Czechoslovakia, and the Kingdom of the Serbs, Croates and Slovenes it should be said at once that there is much greater resemblance between the first two than between either and the last-named document.[1] This circumstance undoubtedly arises from the fact that in organizing their new state the South Slavs drew a large proportion of their political institutions from Serbia, its largest and most influential member, while the two northern peoples were neither able nor compelled to reproduce in their new constitutions provisions from an instrument of government under which many of them were actually living. Consequently, the system of government set up in Jugoslavia is more largely of native growth than is that of Poland or of Czechoslovakia. Indeed, the Jugoslav constitution is largely and directly based upon the Serbian instrument of 1903, while those of the two other states are of more composite origin. The example of Paris was much more influential in Warsaw and in Prague than in Belgrade; and it was more closely followed in

[1] An English translation of the constitution of Czechoslovakia appears in *Current History*, Vol. 12, No. 4, pp. 727–736 (July, 1920). It is not entirely accurate, and Article 11, which provides that the term for which the Chamber of Deputies is elected shall be six years, is omitted. A better translation is to be found in Hoetzel and Hoachim, the *Constitution of the Czechoslovakia Republic, With Introduction* (Prague, 1920). This pamphlet also contains a number of the constitutional laws of the new republic. An English translation of the Polish constitution appears in *Current History*, Vol. 14, No. 2, pp. 358–367 (May, 1921), and in the *Polish Bulletin*, April 15, 1921. The following corrections to this translation are noted: in Article 2, second sentence, "The legislative organs of the nation are;" the word "legislative" should be omitted. Article 35, paragraph 3, should read, "If the Sejm approves by an ordinary majority, or rejects by a majority of eleven-twentieths," etc. A French translation of the Jugoslav constitution is printed in *L'Europe Nouvelle*, IV, No. 31, pp. 987–991, and No. 32, pp. 1021–1027 (July 30 and August 6, 1921); an excellent English translation by H. W. Wolfe and Arthur I. Andrews, is now available in *Current History*, Vol. 15, No. 5, pp. 832–847 (February, 1922). In this number of *Current History* also appears an interesting article upon four new European constitutions: R. R. Buell, "The New Democracies of Europe."

Warsaw than in Prague. American institutions are most clearly reflected in those of Czechoslovakia.

The spirit and the political philosophy of Poland and Czechoslovakia, or at least of those who dominate therein, are expressed in the preambles to their constitutions, and in their constitutional provisions as to the ultimate location of political power. The attainment and preservation of independence, right, liberty, equality, justice, peace and even of self-determination, appear in the preambles among the avowed ends of the state, while in both organic laws the people are specifically named as the source of all political authority. The constitution of the Jugoslavs is not introduced by a preamble and contains no reference to popular sovereignity. In its first article it declares the State of the Serbs, Croates and Slovenes to be a "constitutional, parliamentary, and hereditary monarchy." The Polish state is formally named a republic, and Czechoslovakia is said to be a "democratic republic, at the head of which is an elected President." The Serbs, Croates and Slovenes also followed their own precedents in the organization of their legislature. The decision of the Belgrade constituent assembly to adopt the principle of the unicameral legislature and to set up a body copied from the Serbian Skupshtina placed the legislature of this country in contrast with those of the other two states, indeed, with those of practically all other nations.[2]

Each of these constitutions provides that there shall be a double system of courts, regular and administrative, the independence of which is assured by the usual provisions protecting the judges from executive or legislative pressure. Czechoslovakia has adopted the American principle of judicial review and has made its development by judicial construction unnecessary by writing it

[2] The draft constitution submitted by the government to the constituent assembly provided for a Senate one-third as large as the Chamber of Deputies and composed of members at least forty years of age. The unicameral legislature was substituted only after prolonged discussion, and by a narrow margin. It is interesting to note that in Poland also this question was one of the major subjects of debate in the constituent assembly and among the people generally. The bicameral system won by a few votes.

into her constitution in explicit terms.[3] The Polish constitution is equally explicit upon the subject, but with different intention. Article 81, which appears in the section upon the judiciary, declares that: "The courts have not the right to inquire into the validity of duly promulgated statutes." On the other hand, the last article of the section upon the legislature, Article 38, limits the law-making power by providing that: "No statute may be in opposition to the Constitution or violate its provisions." Thus Poland has adopted the continental theory of the separation of powers and left the legislature to place its own interpretation upon its law-making power under the constitution. This also has been done by Jugoslavia, but not explicitly.

As is usual in unitary states the legislatures of all three countries possess general instead of specifically enumerated powers. Other provisions in the legislative sections of these constitutions which are very similar to each other and to those of most modern organic laws are those setting up the rights, privileges, qualifications, disabilities and incompatibilities of members; those declaring that deputies represent the whole nation instead of merely their respective constituencies, and forbidding the imperative mandate; and those providing that members shall be chosen by universal, direct, equal and secret suffrage. Constitutional provision is made for proportional representation by all of these states. Indeed "P.R.," has been adopted by practically all of the new states of Europe, as well as most of the older ones, and may be accepted as a natural and necessary adjunct to the multi-party

[3] "I. Laws in conflict with the Constitution, the fundamental laws which are a part of it, and laws which may supplement or amend it are void.

"The Constitution and the fundamental laws which are a part of it may be changed or supplemented only by laws designated as constitutional laws.

"II. The Constitutional Court decides whether laws of the Czechoslovak Republic and laws of the Diet of Carpathian Russia comply with Article I.

"III. The Constitutional Court consists of seven members. The Supreme Administrative Court and the Supreme Court each designate two members. The remaining two members, together with the president of the court, are appointed by the President of the Republic." From the enabling provisions of the constitution. The ordinary courts, "in passing upon a legal question may examine the validity of an ordinance, as to law they may only inquire whether it was duly promulgated." Pt. IV, Sec. 102.

system. Poland and Czechoslovakia provide constitutionally for women's suffrage, but the constituent assembly which met at Belgrade could not agree upon this question and left it to be decided by a law. In Czechoslovakia and Poland, contested elections are decided by an electoral court, while in Jugoslavia the National Assembly itself has jurisdiction over such cases. One rather unusual provision in the Polish constitution is that which declares that a deputy may not be the responsible editor of a periodical publication.

In each of the two states which have established bicameral legislatures, the lower house is made the predominant body. The Czechoslovak and Polish senates are intended to furnish the conservative element in the government. The right to vote for senators is not acquired in Czechoslovakia until the twenty-sixth year, nor in Poland until the thirtieth. In both states the age qualification for membership in the lower house is twenty-one. The age of eligibility for membership in the Senate is forty years in Poland and forty-five in Czechoslovakia, although the President of the latter republic need be only forty, and in the former state need meet no age qualification. In Poland the terms of the lower and upper houses are of the same duration (five years), while in Czechoslovakia they are of six and eight years, respectively. The Polish constitution provides that the Senate shall be one-fourth as large as the Sejm, while the Czechoslovak National Assembly contains 150 senators as compared with 300 deputies.

To the conservative chambers, which are thus guaranteed, are assigned limited functions of review and delay in matters of legislation. A measure passed by the Czechoslovak chamber becomes a law in spite of the dissent of the Senate if the lower house by a majority of its entire membership reaffirms its original vote. If the Senate rejects by a three-fourths majority of the entire membership a bill which has passed by the Chamber of Deputies, the bill becomes a law only if again passed by the Chamber by a majority of three-fifths of the entire membership. On the other hand, the veto of the Chamber of Deputies over bills from the Senate may be exercised by a simple majority of the entire mem-

bership. The suspensive veto of the Polish Senate is even less potent, for it must be exercised within sixty days and can be overridden by a majority of eleven-twentieths of those voting in the lower house. In neither state is the government responsible to the Senate, although in Czechoslovakia the Senate as well as the Chamber of Deputies is given the right of interpellation. Both constitutions place control over the national finances in the hands of the lower house.[4] Neither of these senates represents political subdivisions of an importance comparable with that of the states of the American Union or the German Reich, nor will either of them be strengthened by that "sentiment of attachment to a venerable institution" which Lord Bryce believed to be one of the elements of usefulness of the British House of Lords. In fact, they are largely artificial creations, and it does not seem likely that either of them will rank high in power and influence among the second chambers of the world.

Nothing is of more vital importance in the actual operation of a modern government than the working relations between the executive and the legislative departments, and between both branches of the government and the electorate. In the constitutions under consideration, provision is made that the legislature may be dissolved by the chief executive, new elections to be held within a stated period. In Poland, however, the consent of three-fifths of the statutory members of the Senate must be obtained; in Czechoslovakia the President may not exercise this right within the last six months of his term; while in Jugoslavia the decree of dissolution must be signed by all the ministers. Only Poland has given the legislature the right to appeal to the electors against the government, doing so by providing that the Sejm may be dissolved by its own vote, passed by a majority of two-thirds of those voting. In Czechoslovakia the government, by unanimous vote, may order a popular referendum upon any government bill rejected by the National Assembly.

In each constitution annual or more frequent sessions of the legislature are provided for, and each confers upon the chief

[4] The Polish Senate, like the French upper chamber, shares with the President of the republic the power of dissolving the legislature. Article 26.

executive the right to call extraordinary sessions. In Poland and Czechoslovakia the President must call both houses to meet in special session within two weeks of a request to do so, in Poland by one-third of the deputies, and in Czechoslovakia by a majority of either house at any time, or by two-fifths of either house when more than four months have elapsed since the regular session. This power of minority groups to bring the national legislature into special session may well prove to have important political results. It is also possessed by the National Assembly of the German Reich.

An unusual institution established by the Czechoslovak constitution is a commission which possesses practically all of the powers of the legislature during periods when the National Assembly is not in session. This unique body is composed of sixteen deputies and eight senators, chosen in such a way as to facilitate the proportional representation of party groups. It may act in all matters which come within the legislative and administrative jurisdiction of the National Assembly save four: the election of the President or his deputy; the amendment of fundamental laws; the imposition of new and permanent burdens upon citizens or the alienation of state property; the declaration of war. Its acts have temporarily the effect of law, but they must be reported to the chambers in their first sessions after they have convened and become void if not approved within two months. This provision is an adaptation of an article in the Austrian constitution which vested similar powers in the ministry, but of course it is intended to produce precisely the opposite effect. A distinguished citizen of the new state comments upon the commission as follows: "Governmental and executive authority is thus, in principle, devoid of such power as was possessed, for example, by the government of the former Austrian Empire in virtue of the notorious Article XIV of the law relating to the representation of the empire. The Charter of the Constitution does not permit the government of our state to remain for one moment without the control, nor yet without the aid of the legislative body."[5]

[5] Hoetzel, *The Definitive Constitution of the Czechoslovak Republic*, p. 15.

Following, although tentatively and at a distance, the example of Germany, Poland and Jugoslavia have made constitutional provision for economic councils to coöperate with their national legislatures in the formulation of social and economic legislation. In Jugoslavia a single council is contemplated, its composition and competence to be determined by statute. Poland has provided for a more elaborate organization, as follows (Article 68):

"A special statute will create, in addition to territorial self-government, economic self-government, for the individual fields of economic life—namely, chambers of agriculture, commerce, industry, arts and crafts, hired labor, and others, united into a Supreme Economic Council of the Republic, the collaboration of which with state authorities, in directing economic life and in the field of legislative proposals, will be determined by statute."

Such provisions as these open the way for important and interesting experiments in the collaboration of territorial legislatures with bodies frankly representing economic interests.

Perhaps the most significant characteristic of the legislative arrangements of the three states, however, is the absence of any provision for the initiative, referendum, or recall. The only trace of direct democratic government of this sort is in the provision of the Czechoslovak constitution which permits the government to refer to the people any one of their bills which has been rejected by the National Assembly; and this is a very faint trace, indeed. In this respect these Eastern European nations stand in marked contrast with the new Germany, which, in her fundamental law, at least, has progressed much farther along this road to democracy. In fact, all three constitutions, although compromises, reflect the victories of the conservatives over the radicals just as definitely as the adoption of the Constitution of the United States registered the triumph of the Nationalists over the Separatists. This victory is most apparent in Jugoslavia, but was no less decisive in the other two states. Consider the Czechoslovak National Assembly: a Chamber of Deputies elected for six years, all of the members being chosen at one time and the selection of alternates at that time making by-elections impossible; a Senate inevitably conservative; no opportunity for popu-

lar initiative, referendum, or recall. A constitution which puts the controlling power of government into the hands of such a legislature is far from being democracy's farthest advance.

In providing for the organization of the executive branch of government, the three constitutions have, in the main, followed conventional lines. The presidents of the two republics are elected by the national assemblies, each for a term of seven years. Definite provision is made for procedure to be followed in determining whether the President has become incapacitated, in declaring the incapacity to exist and in selecting a substitute or successor.[6] To Americans, the advantages of constitutional definiteness in this matter should be obvious.

In both of the republics and in the kingdom, the irresponsibility of the titular chief of state is definitely provided for by the usual provisions that official acts of the chief executive shall be countersigned by the appropriate minister, or ministers, who are responsible in the political sense.[7] In each republic the President

[6] Article 42 of the Polish constitution declares that, "If the President of the Republic does not perform the duties of his office for three months, the Marshal shall without delay convoke the Sejm and submit to its decision the question whether the office of the President of the Republic is to be declared vacant. The decision to declare the office vacant is taken by a majority of three-fifths of the votes in the presence of at least one-half of the statutory number of Deputies, that is, the number prescribed by the Law of Elections." It will be observed that action under this article permanently removes the incapacitated President from office. The Czechoslovak constitution provides a different, but equally definite procedure, as follows: "If the President is incapacitated or ill for more than six months, and if the government so decides in the presence of three-quarters of its members, the National Assembly will elect an acting President, who will serve as such until the impediment is removed." Article 61. During a brief illness of the President his authority is exercised by the government, which may entrust definite functions to its own president. The Jugoslav constitution contains elaborate provisions for a regency in case of the disability or the minority of the sovereign.

[7] Article 54 of the Jugoslav constitution is, perhaps, the most inclusive and definite in its statement of the irresponsibility of the chief of state: "No exercise of the royal power is valid and executory unless it carries the countersignature of the proper minister. The competent minister is responsible for all of the acts of the King, oral or written, countersigned or not, likewise for all of his political actions. The minister of war and of the navy is responsible for all of the acts of the King in his position as commander in chief of the army."

In Poland, the state is guarded against either a "man on horseback," or an amateur strategist by Article 46: "The President of the Republic is at the same

and his ministers are liable to impeachment by the lower house. In Poland trial is by the Court of State; in Czechoslovakia, by the Senate. The King of the Jugoslav state cannot be impeached, but shares with the National Assembly the right to impeach the ministers, who are responsible to him as well as to the assembly. Impeachment trials are before the Tribunal of State.

More attention is given to the organization of the ministers as a governing council and to the relations between the President and the council of ministers in the Polish and Czechoslovak constitutions than is common in older organic laws. Articles 80 and 81 of the last-named instrument provide that the government shall "act as a college which is competent to take action only in the presence of the President or acting President and a majority of the ministers," and particularly specify four important fields within which the government must make its decisions corporatively. It is also set forth (Article 84) that every government ordinance shall be signed by the President of the government or the acting President, by the ministers charged with its execution, and in no case by less than half the ministers. The President of the Republic may attend and preside over the meetings of the government, and he may require of the government and its members written opinions upon any matter relating to the duties of their offices; he also is specificially authorized to invite the government or its members to consult with him. He appoints and recalls the president of the council (the Polish President possesses similar powers), a power which may make him the most important force in the state at times of national crises. Although the Poles did not include provisions of this sort in their constitution, it is evident they did not intend to allow the relationships and powers involved to develop on a conventional basis. Their constitution directs that a special statute shall determine the

time the supreme head of the armed forces of the state, but he may not exercise the chief command in time of war.

"The commander-in-chief of the armed forces of the state, in case of war, is appointed by the President of the Republic, on the motion of the council of ministers, presented by the minister of military affairs, who is responsible to the Sejm for the acts connected with the command in time of war, as well as for all affairs of military direction."

number, competence and mutual relations of the ministers, as well as the competence of the council of ministers.

Responsibility of the government to the lower chamber in Poland and in Czechoslovakia, and to the National Assembly in the Kingdom of the Serbs, Croates and Slovenes is constitutionally provided for. In the two countries first named, however, the methods by which this responsibility will be enforced are explicitly stated, while the Jugoslav constitution contains simply a declaration of the general principle, after the manner of the older European constitutions. These methods are set forth in the Czechoslovak constitution as follows:

"Art. 75. The government is responsible to the Chamber of Deputies, which may declare its lack of confidence in the government. This shall be done in the presence of the majority of the entire membership by a majority vote upon roll call.

"Art. 76. Motion to declare lack of confidence shall be signed by at least one hundred deputies and shall be referred to a committee, which shall submit its report within eight days.

"Art. 77. The government may ask the Chamber of Deputies to vote its confidence. This motion shall be acted upon without reference to a committee.

"Art. 78. If the Chamber of Deputies declares lack of confidence in the government, or if it rejects the motion of the government for a vote of confidence, the government shall hand its resignation to the President of the Republic, who will select the persons who are to carry on the affairs of state until a new government is formed."

These provisions for ascertaining formally whether the government retains the confidence of the chamber, coupled with the article previously mentioned, under which the government may carry to the people for a referendum vote any of its bills rejected by the National Assembly, may operate to relieve Czechoslovakia from the greatest drawback to the parliamentary form of government: that is, the inability of the legislature to dissent from any important government measure without destroying not only the measure, but also the government. This lack of legislative selective power has had unfortunate results in practically

every country in Europe. If in Czechoslovakia it becomes recognized that ministers need resign only upon a vote of no confidence, and not necessarily upon the defeat of one of their measures, a most important and interesting development in the responsible system of government will have been made.[8]

A word more should be said about the positions of the titular heads of these states and their relations with their respective ministries, legislatures, and peoples. Briefly, in the Kingdom of the Serbs, Croates and Slovenes the old theory, copied from England, that all executive power is in the crown has been adopted, while in the other two states "the government" has been set up as a separate, distinct, almost independent part of the governmental machine, vested with constitutional powers not possessed by the President.[9] "The President," declares Dr. Hoetzel, speaking of Czechoslovakia, "enjoys such governmental and executive power as is expressly assigned to him by the Charter of the Constitution or by other laws of the Republic; all other governmental and executive power rests in the hands of the government. The functions of the President as set out in §64 of the Charter of the

[8] In England, for instance, the danger that upon the rejection of one of its measures by the House of Commons the cabinet may resign or advise a dissolution of Parliament, has had many important results, among which three may be mentioned: first, it has been one of the most potent of the causes which have transferred the balance of power from Westminster to Downing street; second, in late years it has greatly increased the range of questions upon which the cabinet may be defeated and still retain office; third, it has made it practically impossible for any member to vote upon any first class bill upon the merits of the question itself. The Polish constitution is briefer, but equally to the point as to the manner in which ministerial responsibility is to be enforced. Article 58 provides that, "The Parliamentary responsibility of the ministers is enforced by the Sejm by an ordinary majority. The council of ministers or any individual minister will resign at the request of the Sejm."

[9] Nothing can make this difference clearer than the constitutional provisions themselves. Article 47 of the Jugoslav instrument declares that, "The executive power belongs to the King, who exercises it through his responsible ministers. . . ." Article 64 of the Czechoslovak constitution, after vesting eleven specific powers in the President of the Republic, ends by providing that, "All governing and executive power, in so far as the Constitution and laws of the Czechoslovak Republic adopted after November 15, 1918, do not expressly reserve it to the President of the Republic, shall be exercised by the government." The Polish constitution does not contain so explicit a statement of the independent powers of the government, but it actually does create such powers.

Constitution are very comprehensive and effective and enable the President to exercise a great influence on the direction of the affairs of the state, without at the same time burdening him with details."[10] The personality of the great and beloved statesman who is the first President of the Czechoslovak Republic will inevitably enhance the prestige and the power of the office in that country, and it seems not unlikely that both there and in Poland the presidency may become an office of recognized political leadership possessing more political power than is usually wielded by the titular head of a state having the parliamentary form of government. On the other hand, the powers which have been exercised by the ministries of many of the older states, largely upon a conventional basis, have been more clearly defined and definitely recognized and given constitutional sanction in these new republics.

Of the judicial systems set up by the constitutions under review, space allows opportunity to say only that in their principal characteristics they follow familiar lines. One interesting exception in detail (there are many of them) is that the Jugoslav constitution provides for military tribunals which are independent of the regular army establishment. The judges of the higher military courts are irremovable, may not be impeached without the authorization of the Court of Cassation, and may not be transferred without their own consent. Also the Court of Cassation reviews, in the last instance, the decisions of the military tribunals.

As was to be expected, each of these constitutions contains a long section upon the rights and duties of citizens. The Jugoslavs, following the German example, also included a section upon social and economic matters. In the main, these bills of rights are composed of the usual guarantees of civil liberty; but certain provisions concerning the position of labor in the state and the institution of private property are of unusual interest. Jugoslavia lays a broad foundation for state control over the relations between labor and capital in the following articles:

"Art. 23. Labor is under the protection of the state. Women and children should be the objects of special protection in work detrimental to their health.

[10] Hoetzel, *The Definitive Constitution of the Czechoslovak Republic*, p. 16.

"The law decrees special measures for the security and the protection of workers and regulates the hours of the working day in all enterprises.

"Art. 25. Freedom of contract in economic matters is recognized in so far as it is not in opposition to the social interest.

"Art. 26. In the interest of the general welfare and on the basis of law, the state has the right and the duty to intervene in economic relations between citizens in a spirit of justice and for the purpose of averting social conflicts.

"Art. 33. The right of workers to organize for the purpose of ameliorating the conditions of work is guaranteed.

"Art. 37. Private property is guaranteed. From property proceed obligations. The use of property ought not to injure the interests of the community. The ownership, the extent, and the limitations of private property are regulated by law."

These provisions seem to represent an attempt to vest in the government powers which will enable it to vindicate the rights and protect the interests of the community as a whole against injury by either capital or labor. Their proper use calls for disinterested fairness and statesmanlike sagacity. It will be interesting to observe how far these qualities are possessed by those who rule in Jugoslovia.

The Polish constitution in its preamble sets forth that ensuring "to labor respect, due rights, and the special protection of the state" is one of the prime purposes of the Polish nation. In Article 102 it declares that, "Labor is the main basis of the wealth of the republic, and should remain under the special protection of the state. Every citizen has the right to state protection for his labor, and in case of lack of work, illness, accident or debility, to the benefits of social insurance, which will be determined by statute." On the other hand, in Article 99 property is guaranteed "as one of the most important bases of social organization and legal order." The Czechoslovak constitution contains briefer, but essentially similar provisions. Thus these three peoples have written into their fundamental laws the foundation principles of the "capitalistic" state. Although under provisions such as have been quoted a liberal, and from the American viewpoint

a very advanced economic and social system may develop, yet by their social and economic clauses these constitutions may be identified as essential parts of the barrier which the statesmen of Versailles sought to erect against the peril from the east.

Provision for the organization of subordinate governmental units is made in greater or lesser detail by each of these constitutions. In general, the French system has been followed, with wide variations in nomenclature, organization, and in the apportionment of authority and responsibility between the representatives of the localities and those of the central government. Likewise the delicate questions arising from the presence in all three states of large minorities, of distinctly differing racial, political and religious characteristics, have been met by provisions intended to satisfy such groups while still protecting and sustaining the authority and the unity of the state as a whole.[11] Of these minorities the citizens of Ruthenia, or Sub-Carpathian Russia, have been accorded a unique position by the Czechoslovak constitution. Upon voluntarily uniting with its larger neighbor on the northwest, Ruthenia was guaranteed by the Treaty of St. Germain "the widest autonomy compatible with the unity of the Czechoslovak Republic." This guarantee as it is incorporated into the constitution of the latter state in the form of a paraphrase of the appropriate articles of the treaty, provides for a Diet of Carpathian Russia with wide legislative powers in local affairs; for the proportionate representation of Carpathian Russia in the Czechoslovak National Assembly; that the Governor of Carpathian Russia shall be appointed by the President of Czechoslovakia upon nomination by the government and shall be responsible both

[11] These guaranties define and recognize religious, linguistic and educational rights. They are most definite and complete in the Czechoslovak constitution, in which document they form a special section. Both the Polish and the Jugoslav constitutions put it within the power of the legislature to recognize, or to refuse to recognize any religion, and in Poland, "the Roman Catholic religion, being the religion of the preponderant majority of the nation, occupies in the state the chief position among enfranchised religions." The further provision that the relation of the state to the church will be determined on the basis of an agreement with the Apostolic See indicates that close relations may be expected to exist between Warsaw and the Vatican.

to him and to the Ruthenian Diet; and for other rights. Serious differences as to the fairness of these provisions and as to their interpretation and application have already arisen between the two peoples. To the outsider it would seem as though the dual responsibility of the governor were practically certain to create constant and serious friction.

The constitutions of Poland and Jugoslavia contain important provisions regarding the administration and control of the national finances. In consonance with modern practice both states have provided for the creation of the executive budget system, and have set up authorities for examining accounts which are independent of the executive, and dependent upon the lower chamber of the legislative branch of the government. The Czechoslovak constitution leaves the methods by which the financial affairs of the nation shall be controlled to be determined by law.

Although the constitution of none of these new states is regarded as having the temporary character which for years was attributed to the organic laws of the Third French Republic, yet none of them is viewed with entire satisfaction by the people concerned. Adopted by constituent assemblies hastily selected during the turmoil of war or of the early reconstruction period, containing many compromises accepted by narrow majorities, and being relatively easy of amendment,[12] it is not surprising that

[12] The methods of amendment are as follows. Poland: "Art. 125. A change in the Constitution may be voted only in the presence of at least one half of the statutory number of deputies or senators respectively, by a majority of two-thirds of the votes.

"The motion to change the Constitution must be signed by at least one-fourth of the total statutory number of deputies and notice of such a motion must be given at least fifteen days in advance.

"The second Sejm which will meet on the basis of this Constitution may revise this constitutional law with its own vote, taken by a majority of three-fifths in the presence of at least one half of the statutory number of deputies."

Czechoslovakia provides for amendment by the affirmative vote of three-fifths of all of the members of both houses; the proposed law must be designated as a constitutional law. Article 33.

In Jugoslavia, the proposal to amend may emanate from the King or from the National Assembly upon the affirmative vote of three-fifths of its total membership. After the legal proposal is made, the National Assembly is dissolved, elections are held, and the new National Assembly proceeds to accept or reject the proposed amendment. Article 126.

there is a widespread expectation that each of them will undergo numerous changes within the next few years. Yet after all, it seems not unlikely that in their main characteristics they will stand. All three countries are well started upon a vigorous national life under them; the legislation required to complete the governmental systems contemplated by them is rapidly being passed; as time goes on it will be increasingly difficult to upset the institutions which they have created or sanctioned.

To the rest of the world perhaps the most significant fact about these constitutions is that they are based upon the principles of representative, democratic government, and not upon any of the systems which during the past few years have been pictured in certain quarters as ready to supplant everything that is in the realm of politics and economics. In comparison with the working political institutions of the older states of Europe none of them represents any striking advance in democracy. Yet these new constitutions do record the progress of modern democratic institutions, because in them constitutional provision is made for many of the conventional or statutory practices, methods and principles by means of which the older nations have sought to adapt their governments to the ever-changing needs of modern life. A legal recognition of the actual relationship between the titular and the actual executive, the creation of a chief of state standing in power somewhere between the American President and the British King, an explicit declaration of the manner in which the responsibility of the government to the legislature will be enforced, the adoption of economic councils to participate to some extent in legislation, a careful provision for modern methods of national financial procedure—these and other interesting characteristics of one or more of these constitutions mark the trend of political development in Europe today. The experiences of these new states with such institutions cannot fail to enrich the political knowledge of all nations.

CONSTITUTIONAL LAW IN 1920–1921. II

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1920

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IX. SELF-INCRIMINATION; SEARCHES AND SEIZURES

The "self-incrimination" clause of the Fifth Amendment was brought forward in five cases, in three of which it was attended by the "search and seizure" provisions of the Fourth Amendment. The most important of these cases was Gouled v. the United States,[45] in which the court was asked to pass upon the admissibility in evidence, first, of a paper obtained surreptitiously by officers of the government from the office of the accused; and secondly, of papers, described to be of "evidential value only," which were taken from the office of accused under a search warrant. The court, declaring that the constitutional provisions involved must receive "a liberal construction, so as to prevent stealthy encroachment upon . . . . the rights secured by them," held that the government had no right to the possession of any of these papers nor to the use of them as evidence. At the same time, it was held that if the government had had the right to seize the papers in question, for instance, as so much contraband property, and had done so under a warrant sufficient in form, "then it would have been competent to use them to prove any crime against accused as to which they constituted relevant evidence."

In the course of his opinion, Justice Clarke remarked incidentally that "Searches and seizures are as constitutional under the Amendment when made under valid search warrants as they are unconstitutional, because unreasonable, when made without them." Unless the Fourth Amendment has been partially repealed by the Eighteenth

[45] 255 U. S. 298. For a review of some recent cases in the lower Federal Courts throwing light on this subject, see note in the March issue of the *Yale Law Journal* at page 518.

Amendment, which seems most improbable on general principles, this language, if adhered to, would seem to dispose of the contention of advocates of a drastic enforcement of the Volstead Act, that a search without warrant may at times be "reasonable."[46]

The doctrine of the Gouled case is carried a step further in Amos v. the United States,[47] in which it was ruled that the constitutional rights of an accused to be secure against unreasonable searches and seizures and self-incrimination were not waived by the action of his wife in permitting federal officers to search his home without warrant, and that the property thus obtained was not admissible evidence against him. On the other hand, it was ruled in Burdeau v. McDowell,[48] Justices Brandeis and Holmes dissenting, that constitutional guarantees would not be violated by the admission as evidence against an accused of incriminating papers stolen from him by private persons and afterwards delivered to officers of the government. "The government having come into possession of the papers without a violation of petitioner's rights by governmental authority," says the court, it is free to use them. Thus the rule seems to be that, while the government may not compel an accused to produce his own papers as evidence against himself, it may, by subpoena, force their production for the same purpose by any third person having possession of them.

Of the two remaining cases under this heading, the notorious "Nicky" Arnstein is the hero.[49] They held that "Nicky" was within his rights in refusing to testify, notwithstanding the provision of section 7 of the Bankruptcy Act, that no testimony given by a bankrupt shall be offered in evidence against him in any criminal proceeding, since this provision did not guarantee that such testimony would not be used to search out further evidence. The decision falls in line with the well-known case of Counselman v. Hitchcock.[50]

X. DUE PROCESS OF LAW; JUST COMPENSATION

Of the cases arising under the "due process of law" clause of the Fifth Amendment, the most interesting was Goldsmith-Grant Company

[46] For the line of reasoning by which it was established that these two constitutional provisions should be read as complementary, see Boyd v. United States, U. S. 616.

[47] 255 U. S., 313.

[48] 256 U. S.—.

[49] 254 U. S. 71, and *ibid.*, 379.

[50] 142 U. S. 547.

v. the United States.[51] An automobile had been found "guilty" of participating in the removal of distilled liquors to a place of concealment, and was, notwithstanding the claim of the innocent seller, who had reserved title to it, pronounced forfeited to the United States, in accordance with section 3450 of the Revised Statutes. To the objection that this was punishing A for the guilt of B, the court answered that, "in breaches of revenue provisions, some forms of property are facilities," wherefor "Congress interposes the care and responsibility of their owners in aid of the prohibitions of the law and its punitive provisions, by ascribing to the property a species of personality, a power of complicity and guilt in the wrong." The analogy of the ancient deodand was cited and also the passage from the Mosaic Law, "if an ox gore a man that he die, the ox shall be stoned, and his flesh shall not be eaten." It was Blackstone's view the opinion adds, "that such misfortunes are in part owing to the negligence of the owner," and that "therefore, he is properly punishable by such forfeiture;" but whether this was so or not, section 3450 had been on the statute books since 1866, and the principle underlying it had been sustained repeatedly.[52]

Interesting, too, is Hollis v. Kutz,[53] in which was involved the validity of certain orders of the Public Utilities Commission of the District of Columbia, whereby the price of gas to private consumers was increased while the price to the government in the district remained at the previous rate. The contention of plaintiffs that this was unlawful discrimination, since they were forced to make up the loss incurred by furnishing the gas to the government and district at a loss, was answered by the strange assertion that the power of the government in the premises was absolute. "We do not wish," said Justice Holmes for the court, "to belittle the claim of a taker of what for the time has become a necessity to equal treatment while gas is furnished the public." But "the plaintiffs are under no legal obligation to take the gas, nor is the government bound to allow it to be furnished. If they choose to take it, the plaintiffs must submit to such enhancement of price, if any, as is assignable to the government's demands." This language is not very explicit, but the rather extraordinary holding it conveys is apparently to be explained by the original contract between the government and the gas company.

[51] 254 U. S. 505.

[52] Citing the Palmyra, 12 Wheat. 1; Distillery v. United States, 96 U. S. 395; United States v. Stowell, 133 U. S. 1; and other cases.

[53] 255 U. S. 452.

Another decision sustained the right of the commissioner of the District of Columbia to assess and collect rent from the users of space under the sidewalks and streets of the district, notwithstanding that the utilization had been authorized by permits issued in conformance with previous regulations.[54] Such permits, the court pointed out, merely allowed what would otherwise have been a nuisance and in no wise abated the right and interest of the public. Yet another decision sustained the right of the territorial government of Alaska to levy a special license tax upon the manufacture of fish oil and fertilizer from herring.[55] "If," said the court, "Alaska deems it for its welfare to discourage the destruction of herring for canning and to preserve them for food . . . . . and to that end imposes a greater tax . . . . . than upon the similar use of other fish . . . . it hardly can be said to be contravening a constitution that has known protective tariffs for a hundred years."

Lastly, United States v. Rogers[56] interprets the "just compensation" clause of the Fifth Amendment to require, in certain cases at least, the allowance of interest between the time of a taking of property by the government and the final payment of the private owner.

XI. THE SIXTH AMENDMENT

The Sixth Amendment was involved in three decisions. In the group of cases headed by the United States v. Cohen Grocery Company,[57] the court pronounced section 4 of the Lever Act void on the ground that, because of its indefiniteness, it did not permit one charged under it to be informed of the nature of the accusation against him and that for the same reason it virtually delegated legislative power to courts and juries to define offenses.[58] Said Chief Justice White for the majority:

[54] District of Columbia v. Andrews Paper Co., and accompanying cases, 256 U. S.

[55] Alaska Fish Co. v. Smith, 255 U. S. 44.

[56] *Ibid.*, 163. The decision in a series of cases headed by Winton v. Amos, reiterates familiar doctrine regarding the plenary authority of Congress "over the Indians and all their tribal relations" and its "full power to legislate concerning their tribal property," 255 U. S. 373. Similarly, Chase v. United States, 256 U. S. 1, sustained the right of Congress to change the mode of disposition of certain unallotted lands in the Omaha Indian Reservation.

[57] 255 U. S. 81. Of the accompanying cases the most important is Weeds, Inc. et al. v. United States, *ibid.*, 109.

[58] The relevant provisions of the section read thus: "That it is hereby made unlawful for any person wilfully. . . .to make any unjust or unreasonable rate or

"The section forbids no specific or definite act. . . . . To attempt to enforce the section would be the equivalent of an effort to carry out a statute which in terms merely penalized and punished all actions detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury." Justice Pitney, speaking for himself and Justice Brandeis, could not agree with this view of the matter. "In the absence," said he, "of a statutory definition of the method of determining a standard of prices with which to compare the prices alleged to have been excessive, the natural standard . . . . is that adopted in the ordinary transactions of men and adhered to by the common law time out of mind,—the standard of fair market value. . . . . So construed I regard this provision as clearly constitutional." The decision seems to indicate that if the government is to attempt the regulation of prices it must act through an expert body like the interstate commerce commission or the federal trade commission.

Horning v. District of Columbia[59] involved the "trial by jury" clause of the amendment. The question at issue was whether a federal judge, in a criminal case in which the facts were undisputed had the right to charge a jury to find the defendant guilty. A closely divided court found that the judge had such right, inasmuch as the jury still had the power, in returning a general verdict, to decide against both the law and the facts. The dissentients argued that the judge had assumed to do something he had no right to do, namely to direct a verdict, and that this constituted a reversible error. The latter is certainly

charge in handling or dealing in or with any necessaries; to conspire, combine, agree, or arrange with any other person. . . . .(e) to exact excessive prices for any necessaries. . . . .Any person violating any of the provisions of this section upon conviction thereof shall be fined not exceeding $5,000 or be imprisoned for not more than two years, or both." 41 Stat. at L. 297. The government admitted that "a statute creating an offense must use language which will convey to the average mind information as to the act or fact which it is intended to make criminal." United States v.Brewer, 139 U. S. 278, 288. In support of its further contention that the above quoted provisions fulfilled this requirement, the government cited Waters-Pierce Oil Co. v. Texas, 212 U. S. 86; Nash v. United States, 229 U. S. 373; and Miller v. Strahl, 239 U. S. 426, 434. Former Justice Hughes was on the brief for those assailing the act in several of these cases. It is, therefore, interesting to compare his opinion for the court, disposing of a similar objection to the Federal Hours of Service Act of 1907 (34 Stat. at L. 1415), in Baltimore and Ohio Ry. v. Interstate Commerce Commission, 221 U. S. 612. See also 161 U. S. 29, and 227 U. S. 427.

[59] 254 U. S. 135.

the more logical view; an actual abuse of power in one quarter is hardly to be justified by the possibility of a similar abuse from another source.[60]

The third case referred to stands for the proposition that trial by court-martial of military persons for offences committed during imprisonment under military authority does not infract the right to trial by jury secured by the Sixth Amendment, nor the "due process of law" clause of the Fifth Amendment.[61] The decision is a logical application of the leading case of Dynes v. Hoover.[62]

XII. STATUTORY CONSTRUCTION: EXECUTIVE POWER

In Duplex Printing Company v. Deering,[63] the court found that the words "between . . . . employers and employees" of section 20 of the Clayton Act are used in the specific sense of between employers and their employees, not somebody else's employees, or employees generically, and that the words "by peaceful and lawful means" of the same section refer to means that were lawful when the section was enacted or are made so by the act in question; and on this basis held that the Clayton Act does not legalize the secondary boycott in cases involving restraint of trade under the Sherman Act.[64] So "labor's

[60] The right to a jury in "suits at common law," secured by the Seventh Amendment was indirectly involved in Sampliner v. Motion Picture Patents Co., 254, U. S. 233.

[61] Kahn v. Anderson, 255 U. S. 1. Givens v. Zerbst, *ibid.*, 11, also deals with certain aspects of the general subject. Courts-martial, it is pointed out, being "tribunals of special and limited jurisdiction," their judgments, "so far as questions relating to their jurisdiction are concerned, are always open to collateral attack." It was held, however, that in case of such attack, the reviewing tribunal may admit evidence supplementing the court-martial record, to show the military status of an accused.

[62] 20 How. 65.

[63] 254 U. S. 443.

[64] Section 6 of the act was also involved indirectly in the case. The two sections read as follows:

"Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the Anti-trust Laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the Anti-trust Laws."

"Sec. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an

bill of rights," as Mr. Gompers calls it, turns out to be something of a gold brick. Justice Brandeis filed a dissenting opinion for himself and Justices Holmes and Clarke, but Justice Pitney, for the majority, has much the better of the argument. If Congress wishes to make legal what the law has heretofore regarded as illegal, it should use unambiguous language for the purpose.[65]

The Volstead Act was involved in two cases. In Street v. Lincoln Safe Deposit Company[66] it was held that the word "kept" in section 3 of the act means kept for sale or barter, and that therefore the act does not forbid the storage in a warehouse, awaiting its use by the owner

employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." 38 Stat. at L. 737.

[65] The precise effect of section 20 still remains, however, a matter of doubt, and this doubt is increased rather than diminished by the more recent decision in American Steel Foundries v. Tri-City C.T. Council (decided December 5, 1921). In his opinion in the Duplex case, Justice Pitney declares that section 20 "imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States and upon the general operation of the Anti-Trust Laws." A head note to the American Steel Foundries case, on the other hand, asserts that by section 20 "no new principle was introduced into the equity jurisprudence of the Federal courts," that section 20 is "merely declaratory of what was the best practice always." It is possible that a more careful comparison of the two opinions would clear up the seeming discrepancy.

[66] 254 U. S. 88.

himself or his *bona fide* guests, of liquors lawfully possessed before the act went into effect. In the other case it was held that the act had repealed certain sections of the Revised Statutes, making it criminal to defraud the government of taxes previously due it from persons conducting distilleries.[67] As a source of revenue to the government, at any rate, the distilleries have dried up.

The Harrison Anti-Narcotic Act was also under consideration in two cases. In the first, it was ruled that a physician registered under the act was not protected in selling opium to a dealer, but only to "patients" "in the course of his professional practice"—the words employed by the act itself.[68] In the other it was held that the act did not preclude supplementary legislation by the states in the exercise of their police powers.[69]

The Sherman Act and the "commodities" clause of the Hepburn Act were successfully invoked by the government in United States v. Lehigh Valley Railroad Company;[70] but in a later case private plaintiffs under the former act did not fare so well.[71] Two cases under the Federal Employers Liability Act developed the principle that the benefits of the act do not extend to "obvious" risks.[72] Similarly, a decision under the Safety Appliances Acts, mitigates their operation by the distinction between "proximate" and "remote" causes.[73]

Berger v. the United States[74] brought up for consideration for the first time section 21 of the Judicial Code. The court held, three judges dissenting, that the filing of an affidavit asserting personal bias on the

[67] United States v. Yuginovich, 256 U. S.

[68] Jin Fuey Moy v. United States, 254 U. S. 189.

[69] Minnesota v. Martinson, 256 U. S. 41.

[70] 254 U. S. 255.

[71] Frey and Son v. Cudahy Packing Co., 256 U. S. 208, involving an alleged price-fixing agreement. Cf. U. S. v. Shrader's Sons, 252 U. S. 85.

[72] Pryor v. Williams, 254 U. S. 43; and Southern Pacific Co. v. Berkshire, *ibid.*, 415. A third case (Phila. & Reading Ry. Co. v. Donato, 256 U. S. 327) ruled that a flagman whose business it was to signal both interstate and intra-state trains, was engaged in interstate commerce, without regard to the character of the train he was flagging when killed; and a fourth case under the same act (Phila. & Reading Ry. Co. v. Polk, *ibid.*, 332) laid down like doctrine with respect to an employee caught between two cars of a train which was made up of both interstate and intra-state cars.

[73] Lang v. N. Y. Cent. R. R. Co., 256 U. S.—. In United States v. No. Pacif. Ry. Co., arising under the same act, it was held that transfer trains on a terminal track of an interstate carrier are subject to the act, 254 U. S. 251.

[74] 255 U. S. 22.

part of a trial judge leaves the judge no power to pass upon the truth or falsity of the facts alleged, but only power to pass upon their legal sufficiency, if true, to show prejudice. Of three cases arising under the Criminal Code, one determined that a baggage porter on a train was not an "officer of the United States" during the period of federal control;[75] another that the United States Shipping Board Emergency Fleet Corporation is not an "agency of the United States" within the sense of section 41 of the code,[76] and the third that the "possession" of any die or likeness for making coins of the United States, which is punished by section 169 of the code, means conscious possession.[77] The case of Hogan v. O'Neill, which arose under section 5278 of the Revised Statutes, holds that to be regarded as "a fugitive from justice" it is sufficient that one shall have left the state in which the crime is alleged to have been committed, whether for the purpose of escaping prosecution or not.[78]

Four cases arose under war statutes. Two asserted the right of Congress in time of war to authorize the seizure and sequestration, through executive channels, of property believed to be enemy-owned, subject only to the qualification that adequate provision be made for the return of the property in case of mistake.[79] The third is authority for the position that the liability of the director general under the Federal Control Act of March 21, 1918, is civil only and not penal,[80]

[75] Krichman v. United States, 256 U. S. 363.

[76] United States v. Strang et al, 254 U. S. 491.

[77] Baender v. Barnett, 255 U. S. 224. Justice Van Devanter, speaking for the court, quotes the following passage from an earlier decision:

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter. The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the Statute of 1st Edward II., which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire,—'for he is not to be hanged because he would not stay to be burnt.'" United States v. Kirby, 7 Wall. 482.

[78] 255 U. S. 52. Section 5278 of course supplements Article IV, section 2, paragraph 2, of the Constitution.

[79] Central Union Trust Co. v. Tarvan, 254 U. S. 554; Stoehr v. Wallace, 255 U. S. 239.

[80] Missouri Pac. R. R. Co. v. H. A. F. Ault, 256 U. S.—.

while the fourth discloses a doubt whether, under the Tucker Act, anybody is liable at all for derelictions of the telegraph companies during the period of federal control.[81]

Some of these cases, and others also, bear upon the subject of executive power. One of the latter illustrates the court's deference to consistently maintained executive constructions of treaties of the United States.[82] Another defines "peace in the complete legal sense" as peace which has been officially claimed, that is to say, by the President.[83] A third reiterates familiar doctrine concerning the finality of findings of fact by the interstate commerce commission.[84] And a fourth, Sutton v. United States,[85] announces this rule, as stated in the syllabus of the case: "No government official can, by his acts or omissions, render the United States liable, as upon an implied contract, for work done by a government contractor after the appropriation therefore was exhausted, where no such official could have rendered the United States liable for such work by express contract."

B. QUESTIONS OF STATE POWER

I. FREEDOM OF SPEECH AND PRESS

In Gilbert v. Minnesota,[86] plaintiff in error, who had been convicted under a state statute making it unlawful to advocate or teach that men should not enlist in the forces of the United States or of the state, or assist in waging war against the public enemies of the United States, raised two objections to the act in question; first, that it invaded a field of power reserved exclusively to the United States, to wit, that of "the war powers;" second, that it was obnoxious to "the inherent right of free speech respecting the concerns, activities and interests of the United States and its government." The court rejected both contentions. The United States and the states, said Justice McKenna, in effect, are all in the same boat. There is, therefore, nothing to prevent the latter from making the purposes of the former their purposes too and so prohibiting their citizens from obstructing such purposes. And as to freedom of speech, conceding it to be "a natural and inherent"

[81] Western Un. Tel. Co., v. Poston, 256 U. S.—.
[82] Sullivan v. Kidd, 254 U. S. 433.
[83] Givens v. Zerbst, 255 U. S. 11.
[84] Seaboard Air Line Ry. v. United States, 254 U. S. 57.
[85] 256 U. S.—.
[86] 254 U. S. 325.

right, yet it "is not absolute—it is subject to restriction and limitation." Gilbert's speech "was not an advocacy of policies or a censure of actions that citizens had the right to make." Curiously enough, Justice McKenna does not mention the fact that the First Amendment does not protect the citizen against the states, nor does he refer to the "due process" clause of the Fourteenth Amendment as limiting state power in relation to freedom of speech and press.

Justice Holmes concurred in the result. "The Chief Justice, being of the opinion that the subject matter is within the exclusive power of Congress, when exerted, and that the action of Congress has occupied the whole field," dissented. Justice Brandeis also dissented, urging that as Congress is charged with the sole responsibility in the waging of war, its policies relating to freedom of discussion during war time ought not to be subject to state interference and interruption, a view which obviously has much to be said for it. He also made a good argument on the "privileges and immunities" clause of the Fourteenth Amendment, urging that Gilbert was only exercising his right as a "citizen of the United States" to criticize the national government, a right therefore, which no state may "abridge."

II. THE "COMMERCE" CLAUSE

All the cases save one under the "commerce" clause invoked it simply as a restriction on state power, and all except two make fairly obvious application of accepted principles. One informs us that the transmission of a telegram between two points in the same state over a route passing out of the state is "interstate commerce;"[87] another also classifies as "interstate commerce" the carriage of a person and baggage on an interstate ticket from one point to another in the same state;[88] while a third asserts the doctrine that a stream which is navigable in fact remains so in law despite artificial obstructions which may be abated by proper legal authority.[89] Two cases involving the states' taxing power turned on the general proposition that a state franchise tax on a domestic railway company does not contravene the commerce clause although the value of the franchise is derived in part from the corporation's interstate business.[90] Also, a telegraph company may be

[87] Western Un. Tel. Co. v. Speight, *ibid.*, 17.

[88] Galveston, H. & S. A. R. Co. v. Woodbury, *ibid.*, 357.

[89] Economy Light & Power Co. v. United States, 256 U. S. 113.

[90] St. Louis & E. St. L. Electric R. Co. v. Missouri, *ibid.*, 314; St. Louis-San Francisco Ry. Co. v. Middlekamp, *ibid.*, 226.

required to pay a city a small annual license tax for the privilege of doing intra-state business, even though at a loss, the tax having been in existence when the company entered the city;[91] also a state may tax as net profits earned within its limits such proportion of the total net profits of a manufacturing and trading corporation as the tangible assets of the corporation within the state bear to the corporation's total tangible property, provided that payment of such tax be secured by the same means as that of ordinary taxes and not made a condition precedent to the corporation's doing business within the state.[92] On the other hand, a state license tax upon local selling agents for automobiles may not discriminate in favor of the product of local manufacturers;[93] nor may a state levy an excise tax on the sale of gasoline in tank cars or other original packages in which it is brought into the state from another state, although the state may levy such a tax on sales at retail, and even on the use of gasoline in small quantities by the importer himself.[94] The introduction of the original package doctrine into the field of state taxation, which was noted last term, is thus confirmed.[95] It is to be hoped that it will cause the court less vexation than it has in the field of the police power.[96]

The general legislative power of the state in relation to the commerce clause was vindicated in two cases. In the first it was held that a bridge company chartered by the state of New York to construct a railroad bridge over the Niagara River might be required by the state, in the exercise of its reserved right to amend charters granted by itself, to perform certain additional services reasonable in character, even though the bridge in question had been authorized by Congress and recognized by the secretary of war as a lawful structure.[97] In the other, the important principle was laid down that the right of the United States in the navigable waters within the several states is limited to the control thereof for purposes of navigation and that subject to that right, each state is the owner of the navigable waters within its boundaries and of the land lying thereunder.[98] A third case decided

[91] Postal Telegraph-Cable Co. v. Tremont, 255 U. S. 124.

[92] Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113.

[93] Bethlehem Motors Corporation v. Flynt, 256 U. S. 421.

[94] Bowman v. Continental Oil Co., *ibid.*,—.

[95] See Askren v. Continental Oil Co., 252 U. S. 444. The previously dominant rule was that laid down in Brown v. Houston, 114 U. S. 622.

[96] See Austin v. Tennessee, 179 U. S. 343.

[97] International Bridge Co. v. N. Y., 254 U. S. 126.

[98] Seattle v. Oregon & Washington R. Co., 255 U. S. 56.

that a railway company cannot be required to detour two interstate trains a day to a town of four thousand inhabitants, which was already served by fourteen local trains, seven each way.[99]

III. DUE PROCESS OF LAW; EQUAL PROTECTION OF THE LAWS

With the single exception of Brown Holding Company v. Feldman,[100] which was dealt with above in connection with Block v. Hirsch,[101] none of the cases involving state legislation in relation to "due process of law" and the "equal protection" clauses of the Fourteenth Amendment, offered much of novelty or special interest. The right of a state, under the police power, to prohibit certain wasteful uses of natural gas, and for that purpose to confine its regulations to sources of supply within ten miles of incorporated towns or industrial plants, was sustained;[102] also the right of a state to repeal the optional features of a workman's compensation act and to establish a state fund for compulsory contributions by employers;[103] also the right to make a general workman's compensation act compulsory as to a single hazardous employment, coal mining;[104] also the right to require a railway corporation to abolish, at its own expense, whatever the cost, existing grade crossings;[105] also the right to require the demolition of wooden buildings found by the courts to have been erected within fire limits contrary to valid regulations.[106] On the other hand, a state may not segregate a class of traffic and compel a carrier to transport it in intra-state commerce without substantial compensation, although the return to the carrier from its entire state operations may be adequate;[107] nor may rates set by municipalities for public service corporations be confiscatory in the absence of contract obligation on the part of the corporation;[108] and the powers of municipalities in the making of such contracts will be closely scrutinized.

[99] St. Louis and San Francisco Ry. Co. v. Public Service Comm., 254 U. S. 535.
[100] 256 U. S. 170.
[101] *Ibid*, 135; see note 24 *supra*.
[102] Walls v. Midland Carbon Co., 254 U. S. 300.
[103] Thornton v. Duffy, 254 U. S. 361.
[104] Lower Vein Coal Co. v. Industrial B'd, 255 U. S. 144.
[105] Erie R. R. Co. v. B'd. of Public Utility Com'rs, and several other cases, 254 U. S. 394.
[106] Maguire v. Reardon, 255 U. S. 271.
[107] Vandalia R. R. v. Schnull, 255 U. S. 113.
[108] So. Iowa Electric Co. v. Chariton, 256 U. S.—; San Antonio v. San Antonio Public Service Comm., *ibid.*—.

Under the taxing power, the application of the "unit rule" to the tangible property of a foreign corporation was sustained under both the "due process of law" and the "equal protection" clauses, the tax being one to which domestic as well as foreign corporations were subject.[109] Also, the exaction of an additional transfer tax in the case of bonds and other obligations of a resident decedent, which had hitherto escaped taxation, was found harmonious with these clauses.[110] Also, it was held that the maxim that a tax must be for a public purpose, which is today safeguarded by the "due process of law" clause, was not infracted by the action of the state in distributing among its local units the proceeds of a state income tax;[111] nor by the requirements that the proceeds from a dog licence be paid to the society for the prevention of cruelty to animals.[112] In one case a special assessment was sustained against the charge of arbitrariness,[113] and in another such an assessment was set aside.[114] Lastly, a tax was set aside on the ground that notice and hearing had not been accorded the tax payer.[115]

IV. THE "OBLIGATION OF CONTRACTS" CLAUSE

In Detroit United Railway v. Detroit,[116] the last of a series of cases involving the same parties, the company was informed of what it should have known to begin with, namely, that the "obligation of contract" clause would not maintain it in possession of the city streets after its franchise had expired. Another case vindicates the exercise by a state of the right reserved by it to amend a corporation franchise;[117] and still another the like right to repeal.[118] The general subordination

[109] Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113.

[110] Watson v. State Comptroller, *ibid.*, 122.

[111] Dane v. Jackson, 256 U. S.—.

[112] Nicchia v. New York, 254 U. S. 228.

[113] Miller & Lux v. Sacramento & San Joaquin Drainage Dist., 256 U. S. 129.

[114] Kansas City So. Ry. Co. v. Road Improvement Dist., *ibid.*,—.

[115] Turner v. Wade, 254 U. S. 64. Payment, under a state law, of damages and attorney's fees, as for a vexatious delay, was allowed, in peculiar circumstances, in Hartford Life Ins. Co. v. Blincoe, 255 U. S. 129. See also next note. Two other cases in which the "due process of law" clause was invoked were Bullock v. Railroad Comm. of Florida, 254 U. S. 513, and Ownbey v. Morgan, 256 U. S. 94. In both, however, the facts were so special as to make the holdings of little interest.

[116] 255 U. S. 171. The appellant company also invoked unavailingly the "due process of law" clause of the Fourteenth Amendment.

[117] International Bridge Co. v. New York, 254 U. S. 126.

[118] New York ex rel Troy Union R. R. Co. v. Mealy, *ibid.*, 47.

of the obligation of contracts to the states' police power was asserted in the Feldman case in broad terms, notwithstanding which it was ruled in another case that a state could not exempt the proceeds of a life insurance policy taken out prior to the act from liability for antecedent debts.[119]

V. NATIONAL SUPREMACY

Chief Justice Marshall laid down the rule in McCulloch v. Maryland,[120] more than a hundred years ago, that a state cannot tax an instrumentality of the national government. By the same sign, it was held in Johnson v. Maryland,[121] a state may not require a post-office employee to cease driving a government motor truck in the transportation of mail over a post road until he should obtain a license from the state. Besides citing the McCulloch case Justice Holmes, speaking for the court, also quoted the following apt passage from Marshall's opinion in Osborn v. Bank of the United States:[122] "Can a contractor for supplying a military post for provisions be restrained from making purchases within any state or from transporting the provisions to the place at which troops were stationed? Or could he be fined or taxed for doing so? We have not yet heard these questions answered in the affirmative." "Of course," Justice Holmes continues, "an employee of the United States does not secure general immunity from state law while acting in the course of his employment . . . . ." It may very well be that "when the United States has not spoken, the subjection to local law would extend to general rules that might affect incidentally the mode of carrying out the employment,—as for instance, a statute or ordinance regulating the mode of turning at the corners of streets. . . . . But even the most unquestioned and most applicable of state laws, such as those concerning murder, will not be allowed to control the conduct of a marshal of the United States acting under and in pursuance of the laws of the United States."[123]

[119] Bank of Minden v. Clement, 256 U. S., 126 citing Sturges v. Crowninshield, 4 Wheat. 197, Planters' Bank v. Sharp, 6 How. 327, and other old cases. On the other hand, see Mugler v. Kansas, 123 U. S. 623, and Manigault v. Springs, 199 U.S. The discrepancy between the two classes of decisions is explained by the fact that, in the latter, to have denied the statutes involved a retroactive operation, would have been to defeat an exigent legislative policy.

[120] 4 Wheat. 316.

[121] 254 U. S. 51.

[122] 9 Wheat. 738.

[123] Citing in re Neagle 135 U. S. 1.

The question of state taxation of federal instrumentalities was directly raised in two cases. In one the court held that a state tax upon bank stock, state and national, at a higher rate than was imposed upon intangible personal property generally, including bonds, notes, and other evidences of indebtedness, violated section 5219 of the Revised Statutes, which provides that state taxation of national bank stock "shall not be at a greater rate than is assessed upon other monied capital."[124] In the other it held that a certain railway line, the property of a private company, was subject to state taxation, despite the fact that it was utilized by the government in developing certain coal lands for the Choctaw Indians.[125] The apparent discrepancy between the two rulings is explained by a reference to the precedents, which treat national banks as in themselves instrumentalities of the national government but regard railway lines, like the one here involved, as primarily private enterprises, although performing *inter alia* national services.[126] A sounder basis for the distinction would be, it is submitted, the will of Congress as measured by the "necessary and proper" clause.

This term the court handed down opinions in 194 cases, about 85 of which involved constitutional issues more or less directly. The "commerce" clause was involved in 12 of these cases; the "due process of law" clause of either the Fifth or Fourteenth Amendments, in 28 cases in its general sense, and in 3 cases in its procedural sense; the "equal protection" clause was invoked 10 times; the "obligation of contracts" clause, 7 times; the "self-incrimination clause," 5 times. The largest number of opinions was prepared by Justice McKenna who spoke for the court 30 times, while the late Chief Justice is represented by only 18 opinions of the court, 7 of which are hardly more than references to an eighth. Once again Justice Pitney has the longest opinion of the term to his credit, while those rendered by Justice McReynolds are usually notable for their brevity. In 35 cases dissents were announced, but opinions were rendered in only 13 of these, and in only 5 did as many as four justices dissent. The most important dissenting opinion was the dissenting-concurring opinion of Justice Pitney in the Newberry Case, which probably foreshadows what will finally be the view of the court on the constitutional question there involved.

Before the term ended the death of Chief Justice White had occurred. He was first elevated to the bench as an associate justice by Mr. Cleve-

[124] Merchants' National Bank v. Richmond, 256 U. S.—.

[125] Choctaw, O., & G. R. R. Co. v. Mackey, *ibid.*,—.

[126] See Union P. R. Co. v. Peniston, 18 Wall. 5; also, Central P. R. Co. v. California, 162 U. S. 91.

land in 1893, after the Senate had rejected two other nominees through the exercise of "senatorial courtesy." Mr. White was himself a Senator from Louisiana at the time, and so his nomination escaped this blighting taboo. Upon the death of Chief Justice Fuller, President Taft nominated Justice White as the former's successor, after, it is said, a hint had come from the other justices that they would prefer that arrangement to the appointment of Mr. Hughes, who was reported to be slated for the post. Mr. Hughes was later made associate justice and Mr. Taft himself now succeeds Chief Justice White.

The late Chief Justice was a native of Louisiana and a Catholic, and received his early training in a Jesuit school. His judicial opinions are characterized by a pronounced preference for words of Latin origin, long periodic sentences, and a drastically syllogistic method. Like those of Chief Justice Marshall, they are pervaded with the spirit of debate; and they do not always avoid an additional flavor of casuistry. A fair sample of his art is to be found in his opinion in the Selective Draft cases.[127] Other notable utterances were his opinions for the court in the Commodities' Clause Case[128] and in the Standard Oil and Tobacco Trust Cases,[129] both of which also attest his skill as a compromiser.

A Confederate soldier in his youth, Chief Justice White died a convinced nationalist, but perhaps the phrase for which he will be longest remembered is one coined by him in the Standard Oil case—"the rule of reason." The same phrase points, moreover, to his chief contribution to current constitutional theory, the encouragement he lent the doctrine that Congress' power to prohibit interstate commerce is not, as Marshall stated in Gibbons v. Ogden,[130] limited only by that body's responsibility to its constituents, but rather by judicially enforcible, even if somewhat vague, constitutional limitations, a doctrine which was exemplified in the recent child labor case.[131] In his opinion in the oleomargarine case,[132] Justice White, as he then was, would fain have set up similar limitations to Congress' taxing power; but this time Marshall's influence was too potent to be overcome; and the power to tax, when wielded by the national government, still "involves the power to destroy."

[127] 245 U. S. 366.
[128] Delaware & Hudson Co. IV. U. S., 213 U. S. 366.
[129] 221 U. S. 1.
[130] 9 Wheat. 1.
[131] Hammer v. Dagenbart, 247 U. S. 251.
[132] McCray v. U. S. 195 U. S. 27.

LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

Amendments To State Constitutions 1919–21. The following tables set forth the various amendments to the state constitutions which were submitted to the electors and voted on during the years 1919, 1920 and 1921. The information thus disclosed articulates with the last table on the same subject published in the REVIEW.[1] Table I gives the amendments which have been submitted to a vote of the people and Table II gives information on amendments which are now pending.

Altogether, 360 proposed constitutional changes have been acted on during the three years—37 in 1919, 237 in 1920, and 46 in 1921. The total for the two years 1919 and 1920 (274) was considerably larger than that for the previous biennial period (206). The results reported indicate that 198 proposals were adopted and 101 failed. Of those submitted in 1920 (mainly at the general election in November), more than two-thirds were adopted; while of those submitted in 1919 and 1921 about two-thirds failed to carry.

The largest number of amendments voted on in one state were the 41 in Nebraska, submitted by the constitutional convention at a special election in September, 1920, all of which were adopted. In South Carolina, 35 amendments were voted on in 1920, all of which appear to have been adopted. Texas voted on 18 proposed amendments during the three years, 11 in 1919. In Missouri, 17 proposals were voted on, of which 13 were adopted. New Mexico voted on 15 measures (12 at a special election in September, 1921) of which 5 were adopted. Georgia voted on 14 proposals in 1920, all of which were adopted. Indiana voted on 13 proposals at a special election in September, 1921, only one of which was adopted. In New York, 12 amendments were acted on, 7 of which were adopted. Michigan voted on 10 proposals, of which 5 were adopted.

At least 102 proposed amendments are now pending in 24 states. Some of them must be approved by the legislature before submission to popular vote. Pennsylvania has 12 proposals, 5 to be

[1] 13 *American Political Science Review*, 439 (August, 1919).

voted on in November, 1922 and one in November, 1924, while 6 others require further legislative action. In New York, 10 proposed amendments have passed one legislature.

Massachusetts in 1919 voted to accept a rearrangement of its state constitution, incorporating all the amendments to the document of 1780. Several states have voted on the question of calling a constitutional convention. In Wisconsin, this action has been approved; but in California, Tennessee and Texas the proposals failed to carry.

Eighteen states voted on 22 amendments relating to the suffrage. Five states (Arkansas, Michigan, Mississippi, Nebraska and North Dakota) provided for woman suffrage; but in Texas an amendment for this purpose was defeated in 1919. Proposed amendments to the same end are pending in Missouri, Pennsylvania, Vermont and Virginia. Thirteen states voted on other suffrage amendments, authorizing absent voting, or imposing restrictions such as full citizenship or ability to read. Proposed amendments relating to absent voting are pending in California and New York.

Proposed changes in the provisions relating to the initiative and referendum were voted on in three states. They were defeated in Arkansas and California; but a reduction in the number of signatures to petitions was adopted in Nebraska. North Dakota adopted an amendment providing for the recall.

A considerable number of amendments have dealt with minor changes in the structure of state government. Oregon has given the governor power to veto items of appropriations; but a proposal for this purpose in Indiana was defeated. A proposed amendment to the same effect is pending in Connecticut. A number of states have voted on changes relating to the legislature, the judiciary and state officers. Proposals for salary increases in about a dozen states were usually defeated; but in Georgia an amendment to increase judges salaries, and in Nebraska one to increase the salary of legislators, were adopted.

Fourteen states voted on proposed amendments relating to local government, and eleven on proposals on education and schools, most of them of little importance. In Georgia, 4 amendments provided for the creation of new counties. In South Carolina, 32 of the 35 amendments related to debt limits in particular cities and counties. Municipal home rule charter amendments are pending in Pennsylvania and Wisconsin; and a proposed amendment in Nevada will empower the legislature to grant charter making powers to cities.

The most numerous class of proposed amendments were those relating to taxation. In nineteen states, 37 amendments on this subject were voted on; and 14 proposals are pending in eleven states. Many of these are of minor importance. One of the Nebraska amendments provides for uniform taxation of tangible property and franchises, and for classification of other property. A classification amendment was defeated in Ohio. North Carolina adopted an income tax amendment; but income tax proposals in Maine, New Hampshire, Indiana and Minnesota were lost. Single tax proposals were again defeated in California and Oregon. Classification amendments are pending in Pennsylvania, Tennessee and Utah; and income tax proposals in Michigan and Tennessee.[2]

Fourteen states voted on amendments relating to highways, most of them providing for bond issues for road building. Michigan approved an increase of $50,000,000 in the state debt for highways; Missouri authorized a bond issue for $60,000,000; and other proposals were adopted in Colorado and Kansas; while proposed amendments were defeated in Florida, Oklahoma and Texas—the last for a bond issue of $75,000,000. Proposals authorizing state road bonds are pending in Pennsylvania and Wisconsin.

Other amendments for state public works were for state harbors in Alabama, water power development in Idaho and public wharves in Maine. A number of amendments related to control over public utilities.

Four states voted on amendments for the prohibition of the liquor traffic. Kentucky and Texas adopted prohibition, Michigan defeated a proposal to repeal the prohibition amendment, while in Ohio a prohibition amendment was defeated.

In five states (Maine, Michigan, Missouri, Oregon and South Dakota) proposed amendments relating to a soldiers bonus were adopted. Louisiana and Mississippi adopted amendments for pensions to Confederate soldiers; but a similar proposal in Texas was defeated. A soldiers' bonus amendment is pending in Pennsylvania. In some other states proposals for a soldiers' bonus have been submitted to popular vote or are pending, not as constitutional amendments, but under the provisions of the existing constitution.

CHARLES KETTLEBOROUGH.

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[2] See 16 *American Political Science Review*, 53 (February, 1922).

TABLE I—AMENDMENTS SUBMITTED

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Alabama				
Poll tax—Exempting World War veterans until 1923	New sec. 194½	1920		
Road tax—Counties authorized to collect special tax, not to exceed $.50	New Art.	Nov. 1920		
State highway system—Bond issue of $25,000,000 for establishment and maintenance	Sec. 1a, new Art. 20	1920		
Taxation—Certain municipalities authorized to levy ½ of 1 per cent excess property tax	New sec.	1920		
Harbors—State authorized to establish, manage and control	Sec. 93, Art. IV.	1920		
Counties—Authorized to engage in internal improvements	New Art.	1920		
Highway Bonds—Rate of interest fixed	Art. 20.	Feb. 1921		
Suffrage — Qualifications good character and an understanding of duties and obligations of citizenship	(Sec. 178), Art. 8.	Feb. 8, 1921		
Arizona[3]				
Legislature—Permitting members to hold lucrative civil office, the term of which begins after expiration of members' term.	Sec. 5, subdiv. 2, Art. IV.	Nov. 1920	8,945	26,520
Tax Commission—Election of members	New	Nov. 1920	9,592	25,234
Teachers and public officers—Salary increase (Init.)	New Art. XXV	Nov. 20	13,701	28,053

[3] Adopted by majority of votes cast.

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Arkansas				
Initiative—Electors may approve or reject appropriation bills—Necessary number of signatures increased—Powers of electors extended to govern local measures. (Init.)	Sec. 1, Art. v	1920	86,360	43,662
Woman suffrage—Women not compelled to serve on juries—Aliens denied right of suffrage	Sec. 1, Art. iii	1920	87,237	49,751
Judges—Supreme Court—Fixing the number and compensation	Sec. 2, Art. vii	1920	65,085	63,211
Taxation—Road tax of 12 mills		Not submitted.[4]		
California				
Highway finance board created (Init.)	New sec. 3, Art. xvi	Nov. 2, 1920	435,492	311,637
Schools—Kindergartens a part of system—Funds increased	Sec. 6, Art. ix	Nov. 2, 1920	506,008	268,781
Alien poll tax	Sec. 12, Art. xiii	Nov. 2, 1920	667,924	147,212
Taxation—Exemption—Orphanage	New sec. 1½a, Art. xiii	Nov. 2, 1920	394,014	371,658
State aid for orphanages supporting children of incapacitated fathers	Sec. 22, Art. iv	Nov. 2, 1920	487,023	222,247
Justices—Salaries (Init.)	Sec. 17, Art. vi	Nov. 2, 1920	232,418	538,655
Initiative (Init.)	Sec. 1, Art. iv	Nov. 2, 1920	298,347	421,945
Vaccination—Compulsory prohibited (Init.)	Sec. 15, Art. ix	Nov. 2, 1920	359,987	468,911
Taxation—State university (Init.)	Sec. 15, Art. xiii	Nov. 2, 1920	380,027	384,667
Taxation—Land values (Init.)	Sec. 15, Art. xiii	Nov. 2, 1920	196,694	563,503

[4] Constitution permits only three amendments to be submitted at one time.

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Constitutional convention	Sec. 2, Art. XVIII	Nov. 2, 1920	203,240	428,002
Suffrage—Absent voter	Sec. 1, Art. II	Nov. 2, 1920	356,539	371,784
Indebtedness——State——Providing for issuance and sale of bonds	New sec. 2, Art. XVI	Jul. 1, 1919		
Colorado				
County Judges—Number increased	Sec. 22, Art. IV	Nov. 1920	35,095	97,398
Public officers—Salary increase	Sec. 30, Art. V	Nov. 1920	49,313	112,879
Taxation—Increase of 1 mill for educational purposes (Init.)	Sec. 11, Art. X	Nov. 1920	160,268	52,324
Highways—Bond issues for improvements	Sec. 3, Art. XI	Nov. 1920	100,130	70,997
Delaware				
Judiciary—Chief justice may grant restraining orders in absence of chancellor from county in which suit in equity has been instituted	Sec. 17, Art. IV	Published before Gen. Election 1920	Adopted by legislature, 1921. Approved Mar. 31, 1921	
Legislature——Compensation	Sec. 15, Art. II		Adopted by legislature, 1919.	
Florida				
Highways——Empowering legislature to issue bonds not exceeding 5 per cent total assessment	Sec. 6, Art. IX	1920	34,504	54,510
Georgia				
School tax—Local	Par. 1, Sec. 4, Art. VIII	Nov. 1920	Adopted	
Lanier County—Creation of	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
Lanier County—Creation of	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
Long County—Creation of	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
Seminole County—Creation of	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Apportionment of representation to new counties	Par. 1, Sec. 3, Art. III	Nov. 1920	Adopted	
Judicial circuit—Lanier County	Par. 2, Sec. 1, Art. II	Nov. 1920	Adopted	
Judges—Salary increase	Par. 1, Sec. 13, Art. VI	Nov. 1920	Adopted	
Soldiers' pensions	Par. 1, Sec. 1, Art. VII	Nov. 1920	Adopted	
Street improvement bonds issued upon authority of council	Par. 1, Sec. 7, Art. VII	Nov. 1920	Adopted	
Debt limit—Authorizing West Point to increase	Par. 1, Sec. 7, Art. VII	Nov. 1920	Adopted	
School appropriations—Legislature authorized to make	Par. 1, Sec. 6, Art. VIII	Nov. 1920	Adopted	
Brantley County created	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
Lamar County created	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
Idaho				
Supreme Court—Increasing the number of justices from 3 to 5	Sec. 6, Art. V	Nov. 1920	35,265	30,989
Public utilities commissions—Supreme court given jurisdiction from appeals from orders of	Sec. 9, Art. V	Nov. 1920	33,570	26,020
School lands—To permit the sale of 200 sections annually in place of 100 sections	Sec. 8, Art. IX	Nov. 1920	30,790	31,859
Water power—Authorizing the state to control and promote development of	Sec. 2, Art. VIII	Nov. 1920	32,322	27,812
Indiana				
Suffrage—Restricted to fully naturalized citizens	Sec. 2, Art. II	Sept. 6, 1921	130,242	80,574

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VETO	
			Yes	No
Registration—Classification of counties townships, cities and towns	Sec. 14, Art. II	Sept. 6, 1921	90,269	110,333
Legislature—Apportionment on basis of vote for secretary of state	Sec. 4, 5, Art. IV	Sept. 6, 1921	76,963	117,890
Veto—Items in appropriation bills	Sec. 14, Art. V	Sept. 6, 1921	83,265	101,790
State officers—Term fixed at 4 years	Sec. 1, Art. VI	Sept. 6, 1921	74,177	113,300
County officers—Term fixed at 4 years	Sec. 2, Art. VI	Sept. 6, 1921	82,389	115,139
Prosecuting attorney—Term fixed at 4 years	Sec. 11, Art. VII	Sept. 6, 1921	76,587	116,683
Lawyers—Qualifications prescribed by legislature	Sec. 21, Art. VII	Sept. 6, 1921	78,431	117,479
Education—Appointment of state superintendent	Sec. 8, Art. VIII	Sept. 6, 1921	46,023	149,294
Taxation—Legislature to provide system	Sec. 1, Art. X	Sept. 6, 1921	31,786	166,186
Taxation—Income	Sec. 8, Art. X	Sept. 6, 1921	39,005	157,827
Militia—Colored persons admitted	Sec. 1, Art. XII	Sept. 6, 1921	55,027	142,909
Public officers—Terms and salaries cannot be increased during term	Sec. 2, Art. XV	Sept. 6, 1921	80,191	117,140
Iowa				
Woman suffrage	Sec. 1, Art. II		Not submitted	
Kansas				
Taxation—Authorizing the state to raise revenue	Sec. 1 & 2, Art. XI	Nov. 1920	170,710	218,931
Highways—State authorized to construct	Sec. 8, Art. XI	Nov. 1920	284,689	193,347
Farm homes—State aid in purchase of—	New sec. 11, Art. XV	Nov. 1920	223,499	201,559
Kentucky				
Prohibition		Nov. 1919	Adopted	
Peace officers—Removal for neglect of duty in cases of lynching	Sec. 227	Nov. 1919		

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
School funds—Legislature to prescribe manner of distribution	Sec. 186	Nov. 1920		
Education — Superintendent of, an appointive office	Sec. 91, 93, 95	Nov. 1920		
Louisiana				
Taxation—Local tax for schools		Nov. 1920	49,781	24,492
Taxation—State tax of 1 mill for schools		Nov. 1920	57,686	24,009
Port of New Orleans—Organization and powers of the board of commissioners		Nov. 1920	43,099	23,920
Fire and police departments—New Orleans to levy a special tax		Nov. 1920	47,654	22,824
Port of New Orleans—Increasing the power of commissioners		Nov. 1920	42,771	23,609
Pensions — Confederate veterans	Art. 303	Nov. 1920	54,863	21,215
Electors—Qualifications	Art. 200	Nov. 1920	40,909	24,225
Taxation—Exemption of industries—Located on navigation canal	Art. 230	Nov. 1920	10,056	56,975
Maine				
Debt limit—Increased for highway and bridge construction	Sec. 14, Art. IX Sec. 14, Art. XXXV	Sept. 1919	21,542	7,080
Highway and bridges—Bond issues increased from 2 to 10 million	Sec. 17, Art. IX, Art. XXXV	Sept. 1919	26,228	5,125
Militia—Officers to be appointed	Sec. 1, 2, 3, 4 and 5, Art. VII	Sept. 1919	15,826	11,020
Polling places—Legislature may authorize division of towns	Sec. 16, Art. IX	Sept. 1920	76,129	29,333
Public wharves—State indebtedness for, authorized	New sec. 18, Art. IX	Sept. 1920	22,637	6,777

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Voters—Residence qualification amended	Sec. 1, Art. II	Sept. 1920	22,024	6,751
Soldiers' bonus	New sec. 19, Art. IX	Sept. 1920	105,712	32,820
Income tax	Sec. 8, Art. IX	Sept. 1920	53,975	64,787
Maryland				
Legislature—Salary increase	Sec. 15, Art. III	Nov. 1920	76,367	116,762
Clerk of court—Salary increase	Sec. 37, Art. IV	Nov. 1920	58,081	127,638
Massachusetts				
New constitution		1919	263,359	64,978
Michigan				
Debt limit—Increased $50,000,000 for highway improvements	Sec. 10, Art. X	April 1919	558,572	225,239
Judges—Supreme and probate courts—Salaries may be increased during term of office	Sec. 3, Art. XVI	April 1919	313,539	418,778
State officers—Salary of treasurer and auditor-general fixed by law	Sec. 21, Art. VI	Nov. 1920	348,311	463,959
Aliens — Electors — Must be naturalized Absent voting—Privileges extended	Sec. 1, Art. III	Nov. 1920	415,780	359,749
Labor—Hours and conditions of, for men regulated by legislature	Sec. 29, Art. V	Nov. 1920	420,085	413,362
Suffrage—Woman suffrage—Absent voters	Sec. 1, Art. III	Nov. 1920	415,780	359,749
Soldiers' bonus	New sec. 20, Art. X	April 1921	471,159	185,602
Prohibition — Repealing (Init.)	Sec. 11, Art. XVI	April 1919	322,603	530,123
Excess condemnation	New sec. 5, Art. XIII	Nov. 1920	360,668	439,373
School attendance—Compulsory between 5 and 16 years		Nov. 1920	353,817	610,699

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Minnesota				
State highway system—Establishing, providing for maintenance by taxation of motor vehicles	New Art. XVI	Nov. 1920	526,936	199,603
Judges—Probate court—Term fixed at 4 years	Sec. 7, Art. VI	Nov. 1920	446,959	171,414
Taxation—Exemption of personal property—Income tax established	Sec. 1, Art. IX	Nov. 1920	331,105[5]	217,558
Mississippi				
Boards of supervisors—Jurisdiction over roads and ferries to be prescribed by legislature	Sec. 170, Art. VI	Nov. 1920	20,184	45,938
Levee commissioners—Election and term fixed	Sec. 231, Art. XI	Nov. 1920	32,236	26,743
Woman suffrage	Sec. 241, Art. XII	Nov. 1920	39,186	24,296
Poll tax—Uniform tax for male and female inhabitants	Sec. 243, Art. XII	Nov. 1920	41,693	22,733
Soldiers' pensions—Confederate army	Sec. 272, Art. XII	Nov. 1920	42,442	19,542
Missouri				
Municipal charter	Sec. 16, 17, Art. IX	Nov. 2, 1920	385,656	311,922
Taxation—Road districts	New sec. 23, Art. X	Nov. 2, 1920	375,942	340,665
Highway bonds—Legislative power to contract debt	New sec. 44a, Art. IV	Nov. 2, 1920	372,514	339,021
Debt—Limitation of county, city and civil subdivision	Sec. 12, Art. X	Nov. 2, 1920	368,651	329,938
Municipal utilities—Ice-plants—Debt limit increased	Sec. 12a, Art. X	Nov. 2, 1920	381,794	310,210
Blind — Pensions — Tax levy authorized	Sec. 47, Art. IV	Nov. 2, 1920	455,227	295,788

[5] Not adopted; majority of total vote at election (797, 945) required.

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Soldiers' settlement fund Bond issue of $1,000,000	New subdiv. 4, sec. 44, Art. IV	Nov. 2, 1920	379,156	348,749
Elections—Absent voting during military service	Sec. 11, Art. VIII	Nov. 2, 1920	440,102	279,490
Legislature—Salary increase	Sec. 16, Art. IV	Nov. 1920	320,406	407,672
Taxation — Local — Increased by vote of the people remain same until changed in like manner	Sec. 11, Art. X	Nov. 1920	312,323	398,279
Judges—Supreme court—Number increased from 7 to 9	Amendment 1890, Sec. 1, Art. VI	Nov. 1920	315,837	369,077
Judges—St. Louis—Court of appeals—Increased from 3 to 6 members	Sec. 13, Art. VI	Nov. 1920	316,661	355,401
Constitution — Providing for a new one. (Init.)		Nov. 1920	394,437	317,815
Soldiers' bonus	New sec. 44b, Art. IV	Aug. 1921	210,238	100,131
Women eligible to public office		Aug. 2, 1921	159,230	147,751
Road bond issue—Interest paid from motor vehicle license fee	New sec. 44bc, Art. IV	Aug. 2, 1921	247,274	59,776
Constitutional convention	Art. XV	Aug. 2, 1921	175,355	127,130
Montana				
School funds—95 per cent of interest and rents distributed to school districts 5 per cent to permanent fund	Sec. 5, Art. XI	Nov. 1920	77,093	54,184
Board of examiners created—Legislature authorized to create administrative depts.	Sec. 20, Art. VII	Nov. 1920	51,072	72,870
County boards of equalization of state tax commission—Created	Sec. 15, Art. XII	Nov. 1920	58,571	72,161

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Nebraska				
Aliens—Property rights regulated by law	Sec. 25, Art. I	Sept. 1920	65,921	15,223
English—Official language to be used in the schools	New sec. 27, Art. I	Sept. 1920	69,626	13,624
Initiative and referendum—Required number of signatures reduced	Sec. 2, 3, Art. III	Sept. 1920	56,046	19,734
Legislative apportionment—Separate district	Sec. 5, Art. III	Sept. 1920	59,494	20,082
Senators—Number increased from 33 to 50	Sec. 6, Art. III	Sept. 1920	41,083	38,738
Legislature—Increase of salary	Sec. 7, Art. III	Sept. 1920	56,333	19,753
Legislation—Conference report between houses adopted on majority vote of all members—Bills, 1st and 2d reading by title only	Sec. 13, 14, Art. III	Sept. 1920	52,473	17,414
Legislators—Appointment to state offices prohibited	Sec. 16, Art. III	Sept. 1920	63,575	14,503
Public officers—Salary increase during term of office prohibited	Sec. 19, Art. III	Sept. 1920	65,399	15,961
Mineral rights—Reserved in state lands	Sec. 20, Art. III	Sept. 1920	67,513	11,164
Legislative apportionment of 1875 eliminated	Art. IV (old const.)	Sept. 1920	58,835	12,820
Executive offices—Created by 2/3 vote of of legislature	Sec. 27, Art. V	Sept. 1920	60,484	16,110
Tax commissioner—Office created	New sec. 28, Art. V.	Sept. 1920	58,136	17,796
Courts—Jurisdiction and procedure	Art. V	Sept. 1920	56,334	15,908
Laws declared unconstitutional—Concurrence of five judges necessary	Sec. 2, Art. V	Sept. 1920	65,142	12,444

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Judges—Supreme court—Election by districts	Sec. 5, Art. XIX	Sept. 1920	56,912	21,353
Woman suffrage	Sec. 1, Art. VI	Sept. 1920	65,483	15,416
Soldier suffrage	Sec. 4, Art. VI	Sept. 1920	71,979	8,686
School fund	Sec. 4, Art. VII	Sept. 1920	66,040	11,861
School lands—Sale prohibited except at public auction	Sec. 8, Art. VII	Sept. 1920	66,543	14,403
University regents—Election by districts	Sec. 10, Art. VII	Sept. 1920	54,862	21,208
Sectarian institutions—State aid prohibited	Sec. 11, Art. VII	Sept. 1920	60,995	15,365
Industrial schools—Age for commitment to, raised from 16 to 18	Sec. 12, Art. VII	Sept. 1920	66,913	13,199
Normal schools—Board of education for	New sec. 13, Art. VII	Sept. 1920	59,024	17,084
Civil cases—Five-sixths jury verdict authorized	Sec. 6, Art. I	Sept. 1920	64,550	17,834
Taxation—Uniform taxes on tangible property—Classification of other property	Sec. 1, Art. VIII	Sept. 1920	59,105	15,561
Tax exemptions—Household goods—Forestry exemptions changed	Sec. 2, Art. VIII	Sept. 1920	69,903	12,591
County tax limit $.50	Sec. 5, Art. VIII	Sept. 1920	63,463	14,692
County consolidations—Indebtedness	Sec. 3, Art. IX	Sept. 1920	55,539	17,365
Public utilities—Report to railway commission	Sec. 1, Art. X	Sept. 1920	61,776	12,987
Public utility corporations—Competing, may not consolidate without permission of railway commission	Sec. 3, Art. X	Sept. 1920	59,071	15,542
Public utility corporations—Stocks and dividends regulated	Sec. 5, Art. X	Sept. 1920	62,082	11,028
Home rule charters	New sec. 5, Art. XI	Sept. 1920	58,582	13,456

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Corporations—Coöperative—Foreign corporations—Regulated	Sec. 1, Art. XII	Sept. 1920	64,443	9,701
Water—Priority rights	Sec. 5, 6, Art. XV	Sept. 1920	64,353	9,444
Water power—Public rights	Sec. 7, Art. XV	Sept. 1920	69,861	7,377
Woman and child labor—Regulation of and minimum wage	Sec. 8, Art. XV	Sept. 1920	68,013	10,318
Industrial commission—Creation	Sec. 9, Art. XV	Sept. 1920	57,504	21,473
Constitutional amendments—35 per cent of total vote cast necessary for adoption	Sec. 1, Art. XVI	Sept. 1920	60,244	14,655
State officers—Salaries fixed	Sec. 3, Art. XVII	Sept. 1920	61,393	15,510
Constitution—Continuing schedule	Art. XVII	Sept. 1920	54,694	14,262
Nevada				
Supreme court—Justices—Governor authorized to fill vacancies	Sec. 4. Art. VI			
Fiscal year—Beginning changed from January 1 to July 1	Sec. 1, Art. IX			
Legislature—Power limited re local legislation	Sec. 20, Art. IV			
New Mexico				
Highway bonds—Legislature authorized to issue	Sec. 8, Art. IX	Sept. 1919	1,731	9,907
Board of control	Sec. 3, Art. XIV Sec. 13, Art. XII	Sept. 1919	927	10,702
Absent voting	New sec. 6, Art. VII	Nov. 1920	6,742	5,069
Women—Eligible to public office	Sec. 2, Art. VII	Sept. 1921	26,744	19,751
Aliens—Property rights—Aliens ineligible to citizenship under U. S. laws cannot acquire leasehold to real estate	Sec. 22, Art. II	Sept. 1921	25,921	18,342

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
State superintendent of public instruction—Eligible for office for more than 2 terms	Sec. 1, Art. v	Sept. 1921	16,583	25,072
Soldiers and sailors—Property tax exemption in sum of $2000	Sec. 5, Art. viii	Sept. 1921	24,216	22,946
Corporation commission—Powers may be enlarged or altered by the legislature—Making orders of commission binding and to be enforced by supreme court—Burden of proof placed upon carrier, company or person to whom order is directed	New sec. 19, Art. xi	Sept. 1921	16,806	23,644
Governor—Date of taking office changed from January 1 to December 1	Sec. 3, Art. xx	Sept. 1921	18,866	21,458
Legislature—Date of convening fixed for first Tuesday in February—Requiring departments to make financial reports—Budget report—Regulating action on appropriation bills	New subsec. a-1, sec. 5, Art. iv			
Public lands—Creating a state land commission	Art. xiii	Sept. 1921	14,727	26,438
Taxation—Rate for all state purposes lowered from 10 to 6 mills—Rate for county purposes 5 mills—State highway tax of 2 mills—School tax for general county school purposes 10 mills—Municipal tax not to exceed 5 mills	Sec. 2, Art. viii	Sept. 1921	12,696	36,695

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Debt—Authorizing special elections for citizens of municipalities to vote upon question of	Sec. 12, Art. IX	Sept. 1921	16,497	22,636
Schools—County superintendent may serve more than 2 successive terms	Sec. 2, Art X	Sept. 1921	17,996	22,603
Highway bonds—Authorizing issue without submitting question to the electors	New sec. 16, Art. IX	Sept. 1921	29,267	21,259
New York				
Swamp lands—Assessments for drainage	Sec. 7, Art. I	Nov. 1919	718,497	590,235
Absent voting	New sec. 1a, Art. II	Nov. 1919	791,860	534,452
Legislature—Salary increase—Senators' salary increased to $3500	Sec. 6, Art. III	Nov. 1919	625,897	680,945
Judges—Court of appeals—Salary increase	Sec. 7, Art. VI	Nov. 1919	608,244	690,131
State debts	Sec. 2, 4, 5, 11, 12, Art. VII	Nov. 1920	1,117,546	630,265
Electors—Qualifications—Ability to read and write English	Sec. 1, Art. II	Nov. 1921	891,590	627,042
Legislature—Salary increase	Sec. 6, Art. III	Nov. 1921	542,094	1,003,938
County government—Westchester and Nassau counties—Legislature to provide forms	Sec. 7, Art. III	Nov. 1921	645,249	631,355
Soldiers, sailors and marines—Preference in employment to those having served U. S. in time of war	Sec. 9, Art. V	Nov. 1921	699,373	1,101,905
Courts—Children's and domestic relations' courts—Establishment and jurisdiction	Sec. 18, Art. VI	Nov. 1921	906,747	527,056

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Erie canal—Portion in Herkimer County exempt from constitutional provisions	Sec. 8, Art. VII	Nov. 1921	779,763	538,104
Erie canal—Portion between Rome and Mohawk exempt from constitutional provision	Sec. 8, Art. VII	Nov. 1921	743,465	535,726
North Carolina				
Income tax—Rate fixed	Sec. 3, Art. V	1920 Voted on as one amendment	262,873	81,109
Poll tax—Rate fixed	Sec. 1, Art. V	1920		
Tax limit—State and county limited to $.66⅔	Sec. 6, Art. V	1920		
Electors—Qualifications—Length of residence in state changed from 2 to 1 year	Sec. 2, Art. VI	1920 Voted on as one amendment	235,608	83,366
Poll tax—Repealing requirements to pay	Sec. 4, Art. VI	1920		
North Dakota				
Recall		Mar. 16,1920	29,262	17,255
Coal lands—Leasing for agricultural purposes	Sec. 161, Art. IX	Mar. 16,1920	31,579	14,153
Debt limits—School districts may increase upon majority vote	Sec. 183, Art. XII	Mar. 16,1920	24,869	18,923
Elections—Residence requirements	Sec. 121, Art. V	Mar. 16,1920	31,082	16,366
Woman suffrage	Sec. 121, Art. V	Nov. 2, 1920	135,370	60,772
Reformatories——Change of name	Sec. 215, Art. XIX	Nov. 2, 1920	129,628	63,569
School funds—Investing in bonds of other states prohibited	Sec. 162, Art. IX	Nov. 2, 1920	124,431	56,526
Ohio				
Taxation——Classified property tax	Sec. 2, Art. XII	Nov. 1919	439,897	517,245
Prohibition—State wide	Sec. 9, Art. XV	Nov. 1919	454,933	496,786

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Intoxicating liquors—Defining	Sec. 9-1, Art. XV	Nov. 1919	474,907	504,688
Women—May hold office of notary public	Sec. 4, Art. XV	Nov. 1920		
Oklahoma[6]				
Highway building—Authorizing the legislature to issue bonds	Sec. 25a, Art. X	May 1919	69,917	151,327
Legislative session—Fixing the length and compensation	Sec. 21, Art. V	1920	125,463	173,274
Insurance companies—Taxation of companies insuring minor children	Sec. 3, Art XIX	1920	157,064	159,919
Public service corporations in more than one county (Init.)	Art. XIIa	1920		
Taxation——Corporation tax for schools	Sec. 12a, Art. X	Nov. 1920	162,749	179,271
Taxation—Levy of 6-10 mills for schools	New sec. 9-A, Art. X	Nov. 1920	169,639	188,574
Oregon				
Irrigation and drainage district bonds—State authorized to pay interest for first five years	New Art. XI-b	June 1919	43,010	35,945
Lieutenant governor—Providing for election of	Sec. 1, 8, Art. V	June 1919	32,653	46,861
Industrial and reconstruction hospitals—Location fixed	Sec. 3, Art. XIV	June 1919	38,204	40,707
Highways—County debt limit fixed at 6 per cent	Sec. 10, Art. XI	June 1919	49,728	33,561
Soldiers and sailors—Land settlements—Bond issues for	New sec. 7a Art. XI	June 1919	39,130	40,580
Compulsory voting	Sec. 2, Art. II	Nov. 1920	61,258	131,603
Legislature—Fixing the length of the session and the compensation of members	Sec. 29, Art. IV	Nov. 1920	80,342	85,524

[6] Votes necessary to adopt, 244,584.

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Single tax (Init.)	Sec. 1, Art. IX	Nov. 1920	37,283	147,426
Vaccination—Anti-compulsory (Init.)	New sec. 9, Art. XV	Nov. 1920	63,018	127,570
Interest—Legal rate fixed	New sec. 9, Art. IX	Nov. 1920	28,976	158,673
Legislature—Divided session (Init.)	Sec. 10, Art. IV	Nov. 1920	57,791	101,179
Highways—Eminent domain extended over	Sec. 18, Art. I	May 1920	100,256	35,655
Highways—4 per cent debt limitation allowed for maintenance	Sec. 7, Art. XI	May 1920	93,392	46,084
Capital punishment restored	Sec. 36, Art. I repealed. New sec. 37, 38, Art. I	May 1920	81,756	64,589
Debt limit of 2 per cent allowed in Crook and Curry counties	Sec. 10, Art. XI	May 1920	72,378	36,699
Governor—Succession to office in case of death or disability	Sec. 8, Art. V	May 1920	78,241	56,946
County officers' terms increased to four years (Init.)	Sec. 6, Art. VI	Nov. 1920	97,854	80,983
Soldiers' bonus	New Art. XIC	June 1921	88,219	37,866
Veto power—Extended to include single items in appropriation bills and emergency clause without affecting other provisions	Sec. 15a, Art. V	June 1921	62,621	45,537
Legislature—Increase of salary—Introduction of bills regulated	Sec. 29, Art. IV	June 1921	42,924	72,596
Pennsylvania				
Banks and trust companies—Legislature may provide for the incorporation of	Sec. 11, Art. XVI	Nov. 1920	431,122	142,262

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Philadelphia—Debt limit increased	Sec. 8, Art. IX	Nov. 1920	373,643	144,512
South Carolina				
Debt limit—Exempting town of Allendale for purpose of improvements	Sec. 7, Art. VIII; Sec. 5, Art. X	Nov. 1920	8,161	2,892
County officers—Compensation—Repealing	Subsec. 10, sec. 34, Art. III	Nov. 1920	7,562	5,486
Ice plants—Municipal—Authorized	New sec. 13, Art. VIII	Nov. 1920	8,410	2,941
Ice plants—Municipal—Authorized	Sec. 5, Art. VIII	Nov. 1920	8,366	2,925
Debt limit—Exempting county of Sumter	Sec. 5, Art. X	Nov. 1920	8,185	2,950
Debt limit—Exempting city of Charleston for land and waterway improvements	Sec. 7, Art. VIII Sec. 5, Art. X	Nov. 1920	8,177	2,934
Debt limit—Exempting city of Camden	Sec. 7, Art. VIII Sec. 5, Art. X	Nov. 1920	8,174	2,931
Debt limit—Exempting city of Union for purpose of paying debts	Sec. 7, Art. VIII	Nov. 1920	8,119	2,912
Debt limit—Exempting Bennettsville for purpose of improvements	Sec. 7, Art. VIII	Nov. 1920	8,202	2,982
Debt limit—Exempting Cross Keys and other townships of Union County for highway and bridge improvements	Sec. 7, Art. VIII Sec. 5, Art. X	Nov. 1920	8,095	2,971
Debt limit—Exempting city of Chester for pose of improvements	Sec. 7, Art. VIII Sec. 5, Art. X	Nov. 1920	4,305	909
Debt limit—Fixed at 15 per cent in counties of Allendale and McCormick	Sec. 5, Art. X	Nov. 1920	8,199	2,898

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Debt limit—Exempting county of Richland for purpose of improvements	Sec. 7, Art. VIII; Sec. 5, 6, Art. X	Nov. 1920	8,177	2,852
Debt limit—Exempting Laurens County	Sec. 5, Art. X	Nov. 1920	8,123	2,818
Debt limit—Exemption of Newberry for street improvements	Sec. 7, Art. VIII Sec. 5, Art. X	Nov. 1920	8,231	2,827
Debt limit—Exempting Saluda and Kingstree	Sec. 7, Art. VIII	Nov. 1920	8,204	2,978
Debt limit—Exempting Charleston for purpose of improvements	Sec. 7, Art. VIII	Nov. 1920	8,341	2,864
Debt limit—Exempting Lancaster school district	Sec. 5, Art. X	Nov. 1920	8,145	2,830
Debt limit—Exempting Charleston school district	Sec. 5, Art. X	Nov. 1920	8,083	2,812
Debt limit—School districts—Town of Laurens limited to 12 per cent	Sec. 5, Art. X	1920	8,184	2,840
Debt limit—Charleston	Sec. 7, Art. VIII	1920	8,276	2,881
Debt limit — Santee Bridge district	Sec. 5, Art. X	1920	8,328	2,893
Debt limit—Laurens city increased	Sec. 7, Art. VIII	1920	8,257	2,897
Debt limit—Hartsville exempt from restrictions	Sec. 7, Art. VIII Sec. 5, Art. X	1920	8,208	3,020
Debt limit—Exempting Chesterfield from restrictions	Sec. 7, Art. VIII Sec. 5, Art. X	1920	8,184	2,824
Debt limit—School district, Hunter, no. 5, Laurens County	Sec. 5, Art. X	1920	8,170	2,898
Debt limit—Exempting Marion for purpose of improvements	Sec. 7, Art. VIII Sec. 5, Art. X	1920	8,163	2,853

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Debt limit—Exempting Bishopsville for purpose of improvements	Sec. 7, Art. VIII	1920	8,148	2,877
Debt limit—Exempting Bennettsville	Sec. 7, Art. VIII	Nov. 1920	8,155	2,807
Debt limit—City of Abbeville	Sec. 7, Art. VIII	Nov. 1920		
Fiscal year—Beginning changed to July 1	Sec. 10, Art. X	Nov. 1920	8,829	3,189
School districts—Saluda County	Sec. 5, Art. XI	Nov. 1920	8,213	2,852
Taxation—Abutting property may be assessed for permanent improvement of highways	New sec. 13a, Art. X	Nov. 1920	8,356	3,640
Taxation for improvements — Florence County	New sec. 20, Art. X	Nov. 1920	8,098	3,026
Taxation — Pendleton (town) may assess abutting property for improvements	New sec. 16, Art. X	Nov. 1920		
South Dakota				
Debt limit—School districts may exceed for educational purposes	Sec. 4, Art. XIII	Nov. 1920	66,734	72,226
Home building credit system	New sec. 17, Art. XIII	Nov. 1920	80,062	61,674
Soldiers' bonus	New sec. 18, Art. XIII	Nov. 1920	93,459	56,366
Board of control created	New sec. 4, Art. XIV	Nov. 1920	60,763	77,285
State officers — Salaries fixed by legislature	Sec. 2, Art. XXI	Nov. 1920	70,831	77,987
Tennessee				
Constitutional convention		Sept. 1919		
Texas				
Prohibition	Sec. 20, Art. XVI	May 1919	158,982	138,907
Woman suffrage	Sec. 2, Art. VI	May 1919	140,911	165,940

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Governor—Salary increased from $4000 to $10,000	Sec. 5, Art. IV	May 1919	108,803	195,570
Galveston—Bond issue authorized for grade raising purposes	Art. XVI	Nov. 1919	55,600	56,911
State university—Separation of agricultural and mechanical college	Sec. 10-15, Art. VII	Nov. 1919	37,560	76,422
Highways—State bond issue not to exceed $75,000,000	Sec. 49, Art. III	Nov. 1919	29,844	84,518
Pensions—Confederate soldiers and sailors and their widows	Sec. 51, Art. III	Nov. 1919	56,886	59,701
State Prison—50 per cent of profits arising from operation of, to be distributed to the prisoners or their families	New sec. 60, Art. XVI	Nov. 1919	42,358	70,901
Debt limit—Increased for public improvements	Sec. 9, Art. VIII	Nov. 1919	30,214	83,285
Home credits—State authorized to aid farmers to purchase home	Sec. 5, Art. III	May 1919	150,813	151,782
Constitutional convention		Nov. 1919	23,549	71,376
Taxation—School districts	Sec. 3, Art. VII	Nov. 1920	221,223	126,282
Public officials—Compensation to be fixed by legislature—Abolishing fee system	New sec. 60, Art. XVI	Nov. 1920	149,324	164,603
Taxation—Municipal corporations—Limited to 1½ per cent	Sec. 4, Art. XI	Nov. 1920	173,920	146,031
State officers—Salary increase	Sec. 5, 21, 22, 23, Art. IV	July 1921	25,778	68,223
Legislature—Increase of per diem	Sec. 24, Art. III	July 1921	24,424	85,487
Soldiers' pensions—Tax increase	Sec. 51, Art. III	July 1921	49,852	61,568
Electors must be citizens	Sec. 2, Art. VI	July 1921	57,622	53,910

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Prison commissioners abolished — Legislature to regulate system by law	Sec. 58, Art. XVI	July 1921	39,659	71,880
Utah				
Debt limitation—Increased from 1½ to 2 per cent	Sec. 1, Art. XIV	Nov. 1920	15,142	33,417
Taxation—Fixing rate for state purposes	Sec. 7, Art. XIII	Nov. 1920	43,552	31,165
Charters — Conferring more power upon municipal corporations	Sec. 5, Art. XI	Nov. 1920	22,757	27,656
Rights of action to recover damages for injuries	Sec. 5, Art. XVI	Nov. 1920	26,288	24,821
Virginia				
School trustee—Women eligible	Sec. 133, Art. IX	Nov. 1920	112,429	43,121
Education—Compulsory for all children	Sec. 138, Art. IX	Nov. 1920	116,677	41,056
Debts—State may contract for highway construction	Sec. 184, Art. XIII	Nov. 1920	111,309	48,948
Municipal offices—Residence requirements need not apply to certain positions	Sec. 32, Art. II	Nov. 1920	105,690	40,623
Municipal government—Legislatures	Sec. 117, Art. VIII	Nov. 1920	103,356	40,561
School tax—Rate of levy to be fixed by law	Sec. 136, Art. IX	Nov. 1920	111,540	44,581
Washington				
Eminent domain—Land reclamation and settlement purposes	Sec. 16, Art. I	Nov. 1920	121,022	113,287
State officials—Salaries	Sec. 14, 16, 17, 19, 20, 21 and 22, Art. III	Nov. 1920	71,284	170,242
West Virginia				
State highway system—Providing bond issue		1920	248,689	130,569

TABLE I—*Concluded*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Legislature—Divided session—Compensation of members provided	Sec. 22, 23, Art. VI	1920	160,929	122,744
Wisconsin				
Courts—Circuits may be decreased by legislature—Judges—One or more to a circuit	Sec. 6, 7, Art. VII	April 1920	113,786	116,436
Legislature—Compensasation of members to be fixed by law	Sec. 21, Art. IV	April 1920	126,243	132,258
Wyoming				
Taxation—Live stock—Funds for stock inspection	New sec. 15, Art. XV	1920	21,523[7]	18,701
Tax rate—Cities may increase from 8 to 15 mills	Sec. 6, Art. XV	1920	18,893	21,661
School districts may increase debt limit for purpose of creating school buildings	Sec. 5, Art. XVI	1920	36,721	12,178
Debt limit—State may increase for purpose of highway construction	Sec. 1, Art. XVI	1920	28,504	15,393
County debt limit—Increased from 4 to 7 per cent	Sec. 3, Art. XVI	1920	28,393	14,727
Highways—State debt for, limited	Sec. 2, Art. XVI	1920	24,464	16,698

[7] Votes necessary to adopt, 30,326.

TABLE II—PENDING AMENDMENTS

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
Arizona		
Debts—State bonds for land reclamation	Sec. 5, Art. IX	Gen. Elec. Nov. 1922
Debts—Limitation of state debt to 40 per cent—Bond issues submitted to electors	Sec. 5, Art. IX	Gen. Elec. Nov. 1922
Education—Establishing a state board	Art. XI	Gen. Elec. Nov. 1922
California		
Charters—Borough powers abolished only upon consent of electors	Sec. 8, Art. XI	
Cities—Consolidation can take place only with consent of electors	New sec. 7½b, Art. XI	
Justices—Supreme court and district courts of appeal—Salaries to be paid by state	Sec. 17, Art. VI	
Contracts—Municipalities authorized to enter into	New sec. 20, Art. XI	
Taxation—Fixing the rate on notes, bonds, stocks, etc.	New sec. 12½, Art. XIII	
School districts—Joint—Establishing and providing for bond issues	New sec. 6½, Art. IX	
Judges pro tempore—Approval of court	Sec. 8, Art. VI	
Taxation—Interurban railway and bus lines—Fixing rates	Sec. 14, Art. XIII	
Legislation—Special laws re reclamation districts	New sec. 25a, Art. IV	
Suffrage—Absent voters	Sec. 1, Art. II	
Insurance policies—Legislature to classify counties for regulating issuance	New sec. 5½, Art. XII	
Taxation—Exemption—Property of war veterans	Sec. 1¼, Art. XIII	
Public moneys—Regulating deposit	Sec. 16½, Art. XI	
Water power—State or municipal corporations authorized to control streams	New sec. 19a, Art. XI	
Colorado		
Aliens—Property rights to be provided by law	Sec. 27, Art. II	Nov. 1922
County officials—Term extended to four years—General assembly authorized to create offices	Sec. 8, Art. XIV	Nov. 1922

TABLE II—*Continued*

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
State university—Regents may establish and control departments of medicine, dentistry, etc.	Sec. 5, Art. VIII	Nov. 1922
State officers—Term increased to four years	Sec. 1, Art. IV	Nov. 1922
Connecticut		
Judges and justices of peace—Limiting age of service to 75 years	Sec. 3, Art. V	To legislature, 1923
Veto power—Extended to include single items of appropriation bills	Sec. 12, Art. IV	To legislature, 1923
Delaware		
Taxation—Women subject to poll tax	Sec. 5, Art. VIII	Gen. Elec. 1922
Public offices open to women	New sec. 10, Art. XV	Gen. Elec. 1922
Georgia		
Senatorial Districts—Increase in number from 51 to 52	Par. 1, sec. 2, Art. III	1922
Michigan		
Excess condemnation for parks, etc.	New sec. 5, Art. XIII	Nov. 1922
Ports incorporated	New sec. 30, Art. VIII	Nov. 1922
Income tax law	Sec. 3, Art. X	Nov. 1922
Minnesota		
Rural credits—State authorized to establish	Sec. 10, Art. IX	Nov. 1922
Occupation tax—State may levy on all industries	New sec. 1 a, Art. IX	Nov. 1922
Missouri		
Woman suffrage	Sec. 2, Art. VIII	Nov. 1922
Legislature—Salary increase	Sec. 16, Art. IV	Nov. 1922
Highway bonds—Legislative power to contract debts	Sec. 44a, Art. IV	Nov. 1922
Montana		
Equalization boards—County and state created	Sec. 15, Art. XII	Nov. 1922
County and municipal government—Form to be prescribed by legislature	New sec. 7, Art. XVI	Nov. 1922
Nevada		
Charters—Legislature may authorize cities to frame and adopt a charter	Sec. 8, Art. VIII	

TABLE II—*Continued*

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
Justice of peace and constables—compensation fixed by legislature	Sec. 20, Art. IV	
Aliens—Rights repealed	Sec. 16, Art. I (repealed)	
Legislature—Vacancies filled by appointments made by county commissioner	Sec. 12, Art. IV	
New York		
Absent voting	Sec. 1 a, Art. II	To next legislature 1921
Notary public—Legislators eligible to office of	Sec. 7, Art. III	To next legislature 1921
State officers—Providing for their election, term, duties, etc.	Art. V	To next legislature 1921
State officers	Art. V	To next legislature 1921
State officers	Art. V	To next legislature 1921
Forest preserve—legislature may provide by law for development of water power and electric transmission lines	Sec. 7, Art. VII	To next legislature 1921
Taxation—Appropriations for educacational purposes exempt from constitutional provision	Sec. 10, Art. VIII	
Boards of charities and corrections created	Sec. 11, Art. VIII	To next legislature 1921
Municipal legislation—Mayor must return bill to clerk of house	Sec. 2, Art. XII	To next legislature 1921
Judges—Court of appeals salary fixed	Sec. 7, Art. VI	To people 1922
Governor—Allowed 40 days to sign local bills	Sec. 9, Art. IV	To legislature 1923
North Carolina		
Legislature—Increased pay	Sec. 28, Art. II	Nov. 1922
North Dakota		
Legislature—Increased pay	Sec. 45, Art. II	
Judges in certain counties to act as clerk of district court	Sec. 173, Art. X	
Elections—Residence requirements	Sec. 121, Art. V	June 1922
Oklahoma		
Taxation—Increase from 31½ mills to 41½	Sec. 9, Art. X	Spec. Elec.
Pennsylvania		
Statutes—Amendment of—Subject must be expressed in the title	Sec. 6, Art. III	Legislature 1921
Classification of political subdivisions	New sec. 34, Art. III	People Nov. 1922

TABLE II—*Continued*

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
Woman suffrage	Sec. 1, Art. VIII	People Nov. 1922
Charters—Cities may frame and adopt—Local laws must be submitted to electors	Sec. 1, Art. XV	People Nov. 1922
Philadelphia—Authorized to take stock in transit companies	Sec. 7, Art. IX	People Nov. 1922
Philadelphia County—courts of common pleas consolidated	Sec. 6, Art. V	People Nov. 1922
Railroads—Passes for clergymen	Sec. 8, Art. XVII	Legislature 1923
Soldiers' bonus—Authorizing state to issue bonds to amount of $35,000,000	Sec. 4, Art. IX	Nov. 1924
Highways—Increasing bond issue from $50,000,000 to $100,000,000	Sec. 4, Art. IX	Legislature 1923
Sheriffs—In counties of less than 50,000 may succeed themselves in office	Sec. 1, Art. XIV	Legislature 1923
Taxation exemption—Real and personal property of war organizations	Sec. 1, Art. IX	Legislature 1923
Taxation—Classification, exemption in case of inheritance and incomes	Sec. 1, Art. IX	Legislature 1923
South Carolina		
Taxation—town of Greer authorized to assess property for improvements	New sec. Art. X	Gen. Elec. 1922
South Dakota		
Initiative—15 per cent of electors required	Sec. 1, Art. III	Nov. 1922
County organization—Authorizing the legislature to provide for by law	Sec. 1, Art. IX	Nov. 1922
Taxation—State may tax contiguous property for improvements	Sec. 10, Art. XI	Nov. 1922
State officers—Compensation to be fixed by legislature	Sec. 2, Art. XXI	Nov. 1922
Tennessee		
Taxation—Legislature given full power over	Subsec. 1, sec. 28, Art. II (repealed)	Nov. 1922
Utah		
Debt limit—Increasing to 20 per cent	Sec. 1, Art. XIV	Nov. 1922
Taxation—Classification	Sec. 2, 3, Art. XIII	Nov. 1922
Legislature—Increasing pay	Sec. 9, Art. VI	Nov. 1922
Vermont		
Woman suffrage	Sec. 34, ch. 2.	To next legislature

TABLE II—*Continued*

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
Legislature—General Assembly authorized to fill vacancies caused by death, etc.	Sec. 13, ch. 2	To next legislature
Jury trial—Waiver in some cases	Art. x, ch. 1	To next legislature
Age of legal majority—21 for men and women	Art. 1, ch. 1	To next legislature
Virginia		
Woman Suffrage	Sec. 18, 20, 21, 173	Next legislature 1922
Taxation—Abutting property owners pay for certain improvements in certain cities	Sec. 170, Art. XIII	Next legislature 1922
Board of Education—Duties to be prescribed by law	Sec. 132, Art. IX	Next legislature 1922
Washington		
Criminal districts—routes of railways and boats included	Sec. 22, Art. I	Nov. 1922
Appropriations—payments must be made within one month after end of fiscal year	Sec. 4, Art VIII	Nov. 1922
Legislature—compensation of members increased	Sec. 23, Art. II	Nov. 1922
Wisconsin		
Sheriffs may succeed themselves in office	Sec. 4, Art. VI	Nov. 1922
Municipal improvements—Cities may increase their debt limit 5 per cent	New sec. 3b, Art. XI	Nov. 1922
Governor—Salary to be fixed by law	Sec. 5, Art. V	Nov. 1922
Highways—State debt created for construction of	Sec. 9, Art. VIII	
Lieutenant Governor—Salary fixed by law	Sec. 9, Art. V	
Municipal self-government	Sec. 3, Art. XI	Nov. 1922
Court procedure—Verdict in civil cases based upon certain number of jury votes	Sec. 5, Art. I	Nov. 1922
Land settlement—State aid—State may borrow money not to exceed 1/5 of a mill	Sec. 7, Art. VIII	Legislature 1923
Legislature—Increasing compensation of members from $500 to $750	Sec. 21, Art. IV	To legislature 1923

TABLE II—*Concluded*

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
Courts—Circuit judges—One for each circuit (except in counties having population in excess of 85,000)	Sec. 7, Art. VII	To legislature 1923
Municipal corporations—Home Rule	Sec. 3, Art. XI	To people Nov. 1922
Forests—State may appropriate money not to exceed $\frac{3}{10}$ of a mill in any one year for preservation and development of	Sec. 10, Art. VIII	To legislature 1923
Wyoming		
Salary limits of certain county officers fixed	Sec. 3, Art. XIV	Nov. 1922
Boards of Land Commissioners consolidated	Sec. 13, Art. VII Sec. 3, Art. XVIII	Nov. 1922

Governors' Messages, 1922. In the "off" year the legislatures of eleven states regularly meet. The messages of the governors of these states have been examined with the exception of those of Louisiana and Georgia, where the lawmakers assemble in May and June respectively, and that of the retiring governor in Virginia. The messages of newly-elected Governors Hardwick and Morgan, of Georgia and West Virginia, respectively, delivered in July and March of last year are included. Special sessions have been held in at least two states, Nebraska and North Carolina. The message of the latter chief executive could not be obtained. The reading of the messages brings to light nothing of unusual interest. In fact, no striking common characteristic is discovered unless it be their stereotyped or ordinary nature. It is difficult to determine with satisfactory accuracy the relative attention devoted to various subjects in the messages as a whole. One might attempt a sort of mathematical calculation by measuring the page-inches or counting the lines or words, but this would hardly prove profitable. A consideration of the number of governors who mention a subject, in connection with the approximate amount of space devoted to it, will roughly indicate the average estimate of its importance.

As might be expected, taxation and expenditures are the subjects most frequently discussed. The governors of Mississippi, Georgia and South Carolina are especially panicky regarding the state expenses. Governor Cooper of South Carolina returns to his attack of last year

on the general property tax and urges its total abolition as a source of state revenue, proposing the substitution of taxes on incomes, inheritances, petroleum products, occupations and privileges, luxuries, and hydro-electric power, and urging again a constitutional amendment permitting the classification of property for purposes of taxation. Georgia's governor intimates that the ad valorem property tax has broken down, and he would abandon such a tax to the city, substituting a graduated income tax through constitutional amendment. He would also equalize in one field the status of male and female by levying a poll tax on the new women voters. The governors of New York and Rhode Island believe that sources of state revenue other than the general property tax will keep pace with the needs of the states. Kentucky and West Virginia executives direct attention to the failure of the assessment of property for the general direct tax and call for measures of improvement especially on coal lands valuation, in the former state. The governor of Mississippi calls the privilege tax an awkward makeshift in raising revenue when the tax upon property is required by the constitution to be "uniform," and points out the inequality of basing the merchants' taxes on the values of their stocks and of taking from all lawyers an equal amount. In West Virginia and Georgia the limit of direct property taxation is asserted to have been revoked. The governors of Virginia, Nebraska, South Carolina, Mississippi, New Jersey, Georgia and Maryland recommend a tax on gasoline usually for road building and maintenance purposes. It is a favorite plea of several governors that the state takes a relatively small part of each dollar of tax money in comparison with the units of local government. Governor Trinkle of Virginia asserts that the local tax is three times the state tax, while the state returns to eighty-three of its hundred counties more than they pay. His concern over the laxity of county administration causes him to suggest the study of a county-manager plan as a substitute for the supervisor form of county government. He urges increased state supervision and an audit of local accounts by the state accountant at least once in ten years. He also advises the decrease in the tax rate on bonds and notes from $1.10, to $.50 per $100. While Governor Trinkle notes the undesirability of levying a tax for a specific purpose, the governor of Mississippi would put the universities and colleges on a millage basis to free them from the constant dread of lack of funds.

Governor Miller of New York proposes an inquiry into the causes of the excessive costs of local government, as does Governor Cox of

Massachusetts, and at the same time announces a reduction of the direct state tax by twelve millions. Nebraska affords a striking instance of reduction: "The primary purpose for which the special session is called is to reduce the appropriations of the last regular session. Reductions in the property tax total $2,735,805.85. This will enable the State Board of Equalization to reduce the general fund levy 40 per cent this year," begins Governor McKelvie's message to the special session, which carried out his request to the extent of over $2,000,000. Governor Cox calls attention to the reduction last year in the amount of interest paid on loans in anticipation of taxes from $200,000 to $8000, which was accomplished by new methods of placing the state deposits and requiring the deposit of department funds with the state treasurer. Governor Miller notes a saving of $300,000 in prospect through the elimination of unnecessary printing generally and superfluous matter in state reports especially. He suggests that the board of estimate and control break up the printing work so that competitive bids may be more readily made and asks that the state institutions do more of the state's printing.

Mississippi's governor favors the reduction of the salaries of county officers, claiming that many are more highly paid than the leading state officials. He urges fixed salary payment instead of fee payment, and thinks the tax assessor should be the most highly paid official. Kentucky's governor calls for the enforcement against county officers of the state constitutional provision that no public officer except the governor shall receive over $5000 a year for his services. The governors of Virginia, Massachusetts, New York and Mississippi would establish new, or improve existing central purchasing agencies. Governor Miller pointed out that the three institutional groups, as well as the departments, use each its own methods. Forty-seven standard commodities purchased during the year actually cost $317,793.54 more than if all had been purchased at the minimum price paid. In connection with the department of purchasing and supply as created, he thinks there should be an independent committee representative of each of the institutional groups, to prescribe standards and specifications.

The budget is becoming less of a political asset each year, and governors are compelled to talk results rather than simply denounce extravagance. In Kentucky, New York, Mississippi, Maryland, Virginia, Nebraska and Massachusetts, reference to the budget is made, crediting it with a large measure of successful operation, except in Mississippi, where only a sort of tentative scheme has been established,

adequate to show the advantage of careful analysis of public appropriations. Governor Miller advises a budget of two parts: one for current expenses and one for capital expenditures. He thinks the former can be shaped by assisting agencies so as to require little legislative attention, while the latter involves large questions of policy demanding ample consideration. The governor of Maryland submitted the budget and budget bill at the opening of the session instead of taking advantage of the twenty day period allowed by the constitution. Governor Trinkle urged legislators to bring speedily all departments and state institutions within the budget system and to compel all funds to go through the treasury. Governor Cox admits the impossibility of a satisfactory deflated budget in view of the state laws requiring various permanent expenditures.

Administrative reorganization receives continued attention. Kentucky's governor asks an appropriation to enable him to make a business survey of the state departments. Governor Miller forecasts the recommendations to be made as a result of surveys instituted by the board of estimate and control and advises lump-sum appropriations in recommended cases so that department heads may effect the suggested reorganizations. He would amend the constitution to permit the legislators to consolidate the department of public works, state engineer and surveyor's office department of highways, the state architect's office and the department of public buildings. Georgia's governor became eloquent. "During the war period a spirit of hysteria, a spirit of over-regulation, is equally inevitable, and growing out of this spirit, created by both the state and federal legislation, 'Boards,' 'Bureaus,' and 'commissions' infest the land. They constitute another Egyptian plague; they seek to regulate almost every activity of life. Most of these boards must go." He notes that the budget investigation commission reports 277 trustees in the university system alone and recommends a small board of regents instead; as well as a single board of control for state institutions. Governor Ritchie of Maryland urges the grouping of the present eighty state agencies into about twenty coördinated departments in carrying out the Democratic platform of 1921.

Governor Cox commends highly the report of the commission appointed to investigate the methods of transacting public business as "one of the most valuable contributions made to the commonwealth in years," and urges its most earnest study to meet one of the pressing needs of Massachusetts—a growing degree of administrative control and responsibility.

Public education receives comment in eight states. Governor Edwards, of New Jersey, after stating that "the demand has far outstripped the school facilities, resulting in half-day sessions and crowded high schools" continues: "This condition should not be looked upon with alarm or any misgivings; it should rather be looked upon as education of all the people is a costly enterprise encouraging and hopeful;" although the per capita cost of education had increased by the amount of $11.69 in one year to an average of $63.82. Governor Morrow of Kentucky proposes a bond issue of $5,000,000 in a very vigorous special message calling for the improvement of the state's charitable, penal and educational institutions.

West Virginia, Maryland, and Massachusetts governors touch on teachers' salaries; the two former to urge an increase and the latter to mention an increase in the average salary paid in the state from $744 in 1910 to $1486 in 1920. New York and Virginia governors urge different units for school administration; the former for the rural schools, the latter generally. Trinkle would make the county rather than the district the unit of operation. The improvement of rural schools, especially, was urged in New York, West Virginia and Rhode Island. Governor Cox announced with pride the increase of attendance in continuation schools from 8000 to 32,500 within a year and the instruction of 20,000 adults in the English language.

Improved highways were generally urged for their social and commercial value and their influence in preserving the rural life of the states. In Kentucky a bond issue of $50,000,000 was advocated, which the governor called an investment in public business. New York's system, it is asserted, can be completed from current revenue. Governor Russell of Mississippi deplores the constitutional provision which places the jurisdiction of roads, ferries, and bridges solely in the hands of the supervisors of each county. He wishes the mapping out of a complete highway system to be placed exclusively under the state department of highways. Governor San Souci of Rhode Island approved a great increase of supervision over the operation of motor vehicles and a stricter regulation of their weights, dimensions and tire pressures along with a stringent anti-theft law. The spread of the acceptance of proper administrative principles is indicated in the request of Governor Trinkle that the governor be empowered to appoint a highway commissioner with four assistants; the commissioner in turn to appoint the engineer and the latter those who should work under him.

The governors of Kentucky, Mississippi, Georgia, Virginia and Massachusetts commend the agricultural interests to the consideration

of the legislators; the first advises coöperative marketing; the second a bureau of markets and publicity to devise an outlet for the diversified products which the farmers are substituting for cotton. He thinks a system of warehouses and cold storage plants in almost every county will follow. Georgia's governor may alarm the rest of the world in his statement: "Nature has given to the southern states a great monopoly in the production of cotton but the final reward that should follow such a situation can never be fully realized until the southern cotton farmer makes cotton his surplus crop. You can then clothe the world on your own terms." Governor Trinkle advises coöperative buying, selling, and borrowing in a strong plea for economic justice for the farmer. The extension of the grading system to onions, tobacco and such products, is suggested by Governor Cox.

Labor and its problems do not receive the attention one might expect in these times of unemployment. However, seven governors consider it. Governor Edwards holds the problems of labor to be most serious. He comments critically on the practice of employers in seeking those judges who hold decided views against picketing in efforts to obtain injunctions. He asserts that strikers have been summoned out of localities where the disturbances occurred and some tried for contempt in another county. He is not averse to trial by jury in contempt cases. Governor Morgan of West Virginia meets the labor difficulties of the state with a discourse on "governments of law and not of men," on "press exaggeration and exploitation," and on "life liberty and the pursuit of happiness." He asserts that under our form of government there is no class distinction, and surmises that no doubt the legislature will correct the abuses of the private guard or detective system. Only Massachusetts and Rhode Island governors specifically mention unemployment, the former in proposing public works and public building construction, the latter in proposing the continuance of the state free employment office which last year placed four thousand men at a cost to the state of $1 per placement. Georgia's governor says, "my own thought is that in the gradual and joint ownership by both capital and labor of the plants of industry the so-called labor problem will finally be solved."

In most of the states it was suggested that the provisions of the Sheppard-Towner act be accepted. In Rhode Island the authorization of the state health board to employ full time health officers, county or otherwise, is urged. In Virginia active health organizations in each county were advocated wherever possible; and in Mississippi the gov-

ernor thinks every county should be made to provide an all-time health officer. In New York, Massachusetts and Maryland special preventive efforts were stressed as a means of dealing with the feeble-minded in order to avoid the necessity of institutionalizing them. Governor Morrow of Kentucky speaks of two thousand so-called pauper idiots scattered all over the state and given pensions of $75 each annually. Governor Miller stressed the curative side in treating the insane, asking for an adequate field force and an expert alienist. For the prisons, he requested an industrial manager and a system of compensating prisoners for their work. Maryland's governor announces the adoption of the state-use system in prison labor instead of the contract labor system and Governor Cox urges state control of county penal institutions at least to an extent sufficient to secure coöperative, uniform management, and assert that the state should care completely for all convicts in order to promote the possibility of productive employment, vocational training, educational facilities, psychiatric examination, adequate exercise, uniformity in diet and discipline, a proper system of parole and adequate classification.

Governor Russell demands stringent publicity for campaign expenditures and the registration of any agent or worker for particular candidates. From Georgia comes a somewhat belated advocacy of a real, rigid, Australian ballot law to end vote buying. Strict enforcement of the registration law is urged in the hope that women can be permitted to vote without re-opening the negro question politically or admitting an influx of negro women to the electorate. Governor Miller reports that gross frauds occur each year in registration and in the canvass of votes, and would compel the use of voting machines in first- and second-class cities. Governor Morgan announces the existence of a marked sentiment against the present primary system which both the major parties have disapproved. Governor Ritchie of Maryland proposes an amendment giving Baltimore two additional senators and twelve additional delegates. Legal equality for women is urged in Kentucky, Maryland and Massachusetts, at least as far as political rights are involved. Governor Cox, after stating that the right to hold office cannot be given women by constitutional amendment until 1924, proposes to ask the supreme judicial court whether the spirit and proposal of the Nineteenth Amendment have not given women the right to hold all offices under the constitution of Massachusetts.

Governor Miller, noting the 4166 judicial officers and the 3736 justices of the peace in the state who possess power to commit children as

public charges, and the 1238 county, town, or city offices with juvenile jurisdiction, urges the creation of children's courts in all counties outside of New York City and provision for county boards of child welfare. Governor San Souci proposes public aid for dependent mothers and Governor Edwards the enactment of more stringent labor laws for women. References to proposals of similar legislation are made in Virginia and Maryland.

In the field of law enforcement Governor Edwards urges the abolition of the state police force, for which $300,000 had been appropriated the past year. Kentucky's governor asks the legislature to authorize him to remove local peace officers for neglect of duty, since the present method of removal on conviction of malfeasance or misfeasance is absolutely ineffectual. He would also make it unlawful to injure another person with a pistol or other weapon carried concealed, even though the action is taken in self-defence. In Virginia, repeal is advised for a law of 1920 granting appeal as a matter of right in every criminal case, regardless of its merits. The results have been very objectionable.

Prohibition-enforcement was mentioned in six states. Governor Edwards advocated the repeal of the present enforcement act so that the right of indictment and trial by jury might be conserved.

Mississippi and Virginia are much concerned over insurance rates. According to Governor Russell the insurance companies in Mississippi returned a total property value of $1,675,000 for taxation and at the same time asked for a rate increase based on an investment of $7,307,000 in the business; the insurance premiums totaled $6,500,000 and the fire losses $2,500,000. Governor Ritchie hints at the state conduct of fire insurance as a sort of last resort in case the companies will not give proper service. Governor Edwards wishes Congress to deprive the federal district courts of the power to hear on appeal utility cases decided by the state authorities, allowing the Supreme Court alone to entertain an appeal from the court of last resort in each state. Advocates of public merchandising may be interested in Governor Russell's advice that the state lime plants be closed because of prohibitive freight rates, and the suggestion of Governor Hardwick of Georgia that the $540,000 annual interest from the state railroad (the Western and Atlantic) might have to be discounted to meet current needs. The conservative Governor Miller fears the pressure which could be brought to bear for the leasing of water power from the state canal and would substitute for leasing the state's development and sale of this power. He also believes that the state should grant licences preferably for

the distribution of power derived from the state water rather than for its private use.

Regarding canals Governor Edwards states that the Morris Canal has outlived its usefulness; and Governor Miller after showing that $167,000,000 have been expended on the state barge canal, insists that this expenditure must be made to render some adequate service by means of modern equipment and a campaign of education on the advantages of using the canal.

Some miscellaneous proposals are worth recording. Governor Russell would make the acceptance of a fee in a pardon case a criminal offence, partly because of the dangerous political influence frequently brought to bear by the prisoner's attorneys. Both the Massachussetts and Rhode Island governors urge the establishment of emergency funds to be used under the governor's direction between sessions. Governor Russell, referring to a petition circulated in behalf of the insurance companies says "it has been signed by men, women and children, (and some negroes) indiscriminately." The governor of Maryland early in his message enumerates the specific pledges of his party platform to the number of twelve and adds "as will be shown in detail, every one of these pledges is carried out to the letter in bills which will be submitted to you."

Rhode Island's governor urges the legislature to restrict rent profiteering, to provide a judicial determination of fair rent, to allow a stay of judgment of six months in a landlord's suit to recover possession of rented premises, and to make oppressive agreements unenforceable. In a special message Governor Miller approved the plan of the port authority for New York; at the same time denouncing the obstructive tactics of the New York City officials who have proposed that the 105 municipalities included within the port district be erected into a new state. Declaratory judgments are approved by the governor of Kentucky. One of Governor Russel's flights of oratory follows: "It was descent unlooked for, swift and tragic in the extreme, but an empire that went through the fire and brimstone of the Civil War and had risen phoenix like from the ashes of her wars, arose and shook herself like a sleeping giant, took new courage and began the year 1921 with a firm and steady step and a grim determination to profit by the experience of the tragic year 1920, and the result was they accomplished at least two wonderful achievements."

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NOTES ON INTERNATIONAL AFFAIRS

The Washington Conference.[1] The objects of the international conference which sat in Washington from November 12, 1921, to February 6, 1922, were set forth in President Harding's formal invitation of August 11, 1921, to Great Britain, France, Italy and Japan.[2] These objects included two distinct topics, limitation of armament, and Pacific and Far Eastern questions. The problem of an association of nations, emphasized in the Republican platform of 1920 and various addresses by President Harding, lay in the background though not on the formal agenda, published September 21, 1921.

Organization of the Conference. The conference consisted of plenary sessions and committees. The plenary sessions were formal occasions attended by all the delegates, in which announcement was made of programs for discussion or agreements reached. They were not intended for negotiation but for declaration. They were held in Continental Memorial Hall, a handsome marble building on Seventeenth Street, erected by the Daughters of the American Revolution, and were open to members of the Senate and House of Representatives, representatives of the press and such of the public as had cards of admission from the state department.

The delegates sat at a "U"-shaped, green-covered table with Mr. Hughes as chairman at the head of the "U." The remaining American delegates sat at his right, the British at his left and then in regular alternation the French, Italian and Japanese delegations. Thus, as is customary in such gatherings, an alphabetic order was followed. The powers attending merely the Far Eastern but not the Limitation of Armament Conference sat at the ends of the "U" in a similar order, Belgium, China, Netherlands, Portugal. In the center of the "U" sat the secretary of the conference and the official interpreter, M. Camerlynck, ready to repeat instantly every English speech in French and vice versa, for both these languages were official in the conference.

[1] An article which appeared in the Minnesota *Law Review*, March, 1921, was used in the preparation of these notes.

[2] On July 10, 1921, the department of state announced that these powers had been "approached with informal but definite inquiries" on the subject.

Back of the delegates sat their technical experts. Since the auditorium seated only about 1200 persons, subtraction of the space occupied by delegates, experts, senators, representatives and the press left a remainder of forty seats to rotate among those of the public who wished to attend. The real work of negotiation was conducted by committees. There was a committee of the whole on armaments with five powers represented and a committee of the whole on the Far East and Pacific with nine powers represented. These appointed many subcommittees, some of delegates, some of experts, and some mixed. Committee or subcommittee meetings went on almost continuously in the Pan-American building next door to Continental Memorial Hall, closely guarded by marines with fixed bayonets.

The delegations were assisted by technical experts. Of these Japan had the most. The American delegation was also assisted by an "advisory committee" selected by the President, so as to represent prominent organizations of the country, designed to form a liaison between the conference and the public.

Publicity was handled in the manner customary with international conferences. Plenary sessions were public, committees and subcommittees met in private. The public gained only such information of the latter as was given out in *communiques* prepared for the press by the committee itself or in press interviews by plenipotentiary delegates. The latter method gave ground for occasional protest by certain delegations who felt that confidential discussion had been prematurely published. News of committee happenings sometimes came to Washington via London, Paris or Tokyo where it had leaked out through the foreign offices of those countries. Finally, the fertile imaginations of newspaper correspondents were a source for filling news columns if not always for distributing accurate information. Stories of violent disagreement in committee meetings, one of which occasioned an anti-French riot in an Italian town, had to be officially denied by the plenipotentiaries reputed to have participated. Although this type of rumor was something of an embarrassment to the conference, on the whole its progress endorsed the experience gained at Versailles and in the League of Nations that negotiations can be most satisfactorily conducted withdrawn from the glare of public opinion, but that agreements should be published as soon as reached.

The United States Senate has discussed the Washington treaties in open session as they did the treaty of Versailles. To facilitate this discussion the President in submitting the treaties to the Senate on

February 10, 1922, accompanied them with complete minutes of both plenary session and committee meetings and a copy of the official report of the American delegation.

Negotiations. "Our hundred millions frankly want less of armament and none of war." Thus President Harding struck the keynote of the conference at its opening meeting and in spite of much haggling for national advantage in committee meetings the pitch was not wholly lost through the seven plenary sessions which marked the progress of negotiations.

On the opening session, November 12, 1921, after President Harding's address of welcome, Secretary of State Hughes was elected chairman and surprised the conference and the world by laying down a concrete program for the limitation of naval armaments. On November 14 a session was held in which Mr. Balfour for Great Britain, Premier Briand for France, Admiral Baron Kato for Japan and Senator Schanzer for Italy accepted the American proposal "in principle."

Committee negotiations upon the details of this proposal began at once as also upon the Far Eastern problems, but before any conclusions had been reached another plenary session was held, on November 21, to afford Premier Briand the opportunity to say that France was unwilling to discuss an agreement for the limitation of land armament until Germany was "morally" as well as "physically" disarmed. He cited passages from General Ludendorff's recent book to prove that this happy state had not been reached. Delegates of the other powers diplomatically voiced their disappointment, Senator Schanzer of Italy expressing the hope, doomed to disappointment, that the land armament item on the agenda would not be abandoned.

After three weeks filled with committee negotiations over the Japanese demand for a 10, 10, 7 naval ratio instead of the 5, 5, 3 ratio proposed in the American plan, the conference again sat in plenary session on December 10. Previous to the meeting, information had reached America from foreign capitals that a Pacific alliance was being negotiated, and at this meeting Senator Lodge of the American delegation presented the four power Pacific Pact, which he noted covered islands ranging in size from "Australia, continental in magnitude to atolls where there are no dwellers but the builders of coral reefs," islands upon which "still shines the glamour of some of the stories of Melville and the writings of Robert Louis Stevenson." Unfortunately he neglected to refer to the home islands of Japan which the committee had agreed were included, thus misleading President Harding, who offered a contrary

interpretation in a press statement, December 20. This was, however, withdrawn six hours later with the comment that the President had "no objection to the construction" which the delegates had agreed upon. It appears that the inclusion of the Japanese home islands had been originally insisted upon by Great Britain as a sop to the pride of Australia and New Zealand which were also included. The attitude of the United States Senate however, seemed to jeopardize the whole agreement and as Japan was not averse, a subsequent resolution expressly excluded her home islands.

The next plenary session was held on February 1, the seven weeks interim being filled with difficult committee negotiations. The United States, Great Britain and Japan announced substantial agreement upon the American naval limitation program on December 15, the most important modification being the concession to Japan whereby she was to retain the *Mutsu*, which was to have been scrapped. This was a new vessel built by popular subscription and of sentimental importance. Great Britain and the United States were in consequence to complete two new Post-Jutland battleships. More old vessels were to be scrapped, thus leaving the total tonnage and the ratios substantially as in the original proposal. More formidable difficulties in the naval treaty were presented by the French demand for the privilege of building ten Post-Jutland battleships of 35,000 tons each, only withdrawn after Mr. Hughes had cabled Premier Briand, who had returned to France, that insistence upon this demand would wreck the treaty. France however, accepted the 1.75 ratio for capital ships, with the understanding that she be allowed a larger ratio of "defensive ships" in which category she included submarines. In spite of the British demand for total abolition of submarines,[3] and the American desire to limit their number to 60,000 tons for United States and Great Britain with tonnage on the adopted capital ship ratios for the others, France was obdurate. With the failure of submarine limitation, efforts to limit the total tonnage of surface auxiliaries, which certain powers thought necessary to combat them, also failed and the conference had to be content with the Root resolution declaring submarine use against merchantmen piracy, and limiting the size of naval fighting auxiliaries

[3] This demand was in accordance with British traditions. Earl St. Vincent of the British Admiralty said to Robert Fulton, when the latter presented plans for a submarine in 1804: "It is a mode of war which we who command the seas do not want, and which if successful would deprive us of it." Bywater, *Atlantic Monthly*, February 1922, Vol. 129, p. 267.

except aircraft carriers to 10,000 tons. Vessels of larger tonnage were to be regarded as capital ships. Perhaps the warmest debates of the conference occurred on the submarine issue, since Great Britain regarded the French demand as a menace to her safety.

Discussion of the Chinese problem was begun by the presentation on November 16 of ten points by Mr. Sze. These were abandoned and four general principles formulated by Mr. Root and restating the Hay Open Door notes of 1899 and 1900 were adopted. Detailed application of these principles proved difficult, and several Chinese technical experts resigned in disgust. In fact all progress threatened at times to be held up by the failure of China and Japan to agree in their special conversations on Shantung, begun at Washington on December 1, through the good offices of Mr. Hughes and Mr. Balfour.

These negotiations finally succeeded, and in the plenary session of February 1, the Shantung treaty was published together with the five power naval limitation treaty (the five power treaty restricting the use of submarines and poison gases) and a number of resolutions on the Far East which had been previously adopted in committee.

A session of February 4 published two nine power treaties on China, one attempting to assure the territorial and administrative integrity of China and the open door, the other providing for Chinese customs administration. At the final meeting February 6, the five treaties were formally signed and President Harding made a concluding address.

Thus the work of the conference was embodied in five treaties explained and amplified by two subsidiary treaties, twelve resolutions and ten unilateral declarations.

Three treaties, relating to Shantung, Yap and Pacific cables were negotiated at Washington concurrently with the conference.

Senate Action. The treaties with the resolutions directly pertinent thereto, were presented to the United States Senate by President Harding in person on February 10, with the comment:

"All the treaties submitted for your approval have such important relationship, one to another, that, though not interdependent, they are the covenants of harmony, of assurance, of conviction, of conscience, and of unanimity. . . . . I submit to the Senate that if we can not join in making effective these covenants for peace, we shall discredit the influence of the republic, render future efforts futile or unlikely, and write discouragement where today the world is ready to acclaim new hope."

The treaties were immediately referred to the Senate foreign relations committee, which reported first the Yap treaty with Japan. This was approved by the Senate by a vote of 67 to 22 on March 1, and the four power Pacific treaty was promptly submitted. Opposition was led by the indefatigable irreconcilables on the Versailles treaty, Senators Borah, Johnson, Reed, France and LaFollette, supported by some Democrats who favored the League of Nations. However, after vigorous debate, the treaty was approved on March 25 by a vote of 67 to 27, with a reservation declaring that "the United States understands that in the statement in the preamble or under the terms of this treaty there is no commitment to armed force, no alliance, no obligation to join in any defense." Further difficulty arose because of the failure to include in the resolution of ratification the supplementary declaration excluding domestic questions from conference of the four powers and the supplementary treaty excluding the Japanese home islands. After two days debate, however, the Senate consented to ratification of these documents. The remaining treaties of the conference were approved during the next week without reservation and almost unanimously.

These various treaties, resolutions and declarations embody achievements, more or less complete in the three fields which the conference had before it. We may therefore consider in succession its results as to limitation of armament, Far Eastern and Pacific questions, and an association of nations.

Limitation of Armament.[4] The Washington treaties on naval armament limitation are based on four general principles laid down in Mr. Hughes' original proposal:

"(a) The elimination of all capital ship building programs, either actual or projected.

"(b) Further reduction through scrapping of certain of the older ships.

"(c) That regard should be had to the existing naval strength of the conferring powers.

[4] For a history of the efforts to limit armaments, see Wehberg, *Limitation of Armaments* (Washington, 1921), pp. 5–6, translated from French edition, 1914; the same author's more exhaustive *Die Internationale Beschrankung der Rustungen* (Stuttgart und Berlin, 1919), pp. 3–9; Fried, *Handbuch der Friedensbewegung*, (Berlin und Leipzig, 1913), II, pp. 3–56, and Wright, *Limitation of Armament* (Institute of International Education, Syllabus No. XII, November, 1921).

"(d) The use of capital ship tonnage as the measurement of strength of navies and a proportionate allowance of auxiliary combatant craft prescribed."

In detail they provide for a discontinuance of all capital ship building for ten years, certain replacement being allowed France and Italy after 1827. Capital ships include every "vessel of war, not an aircraft carrier, whose displacement exceeds 10,000 tons' standard displacement or which carries a gun with a calibre exceeding 8 inches." Existing capital ships are to be scrapped so as to leave the United States 18 (525,850 tons), Great Britain 20 (558,980 tons), Japan 10 (301,320 tons), France 10 (221,170 tons), Italy 10 (182,800 tons). After 1931 ships over twenty years old may be replaced so as to maintain ratios of 525, 525, 315, 175, 175 among the five powers, no vessel being over 35,000 tons. The treaty is to be effective for fifteen years and to continue after that unless denounced with two years' notice. It may be suspended in time of war with exception of the articles relating to scrapped vessels.

Aircraft carriers are limited with regard both to total tonnage and individual tonnage, but aircraft themselves are not limited. Submarines and fighting surface auxiliaries may not exceed 10,000 tons' displacement or carry guns over 8 inches, but there is no limitation in their total tonnage. Merchant vessels may not be prepared for military use in time of peace except to stiffen decks for guns of not over 6 inches.

No limitation is placed on land forces or armament. The status quo "with regard to fortifications and naval bases" is to be maintained in the American, British and Japanese insular possessions in the Pacific except Hawaii, Australia, New Zealand and the Japanese home islands and the islands near the American continent exclusive of the Aleutians.

Rules were adopted declaring the use of submarines against merchant vessels to be piracy and prohibiting the use of noxious and poisonous gases, and a resolution urged the calling of a conference to consider laws of war.

These armament limitation provisions go an enormous step beyond all previous treaties on the subject. They should result in a genuine saving of money through the discontinuance of capital ship programs. "This treaty" said Mr. Hughes in the plenary session of February 1, "ends, absolutely ends, the race in competitive armament." Without minimizing the achievements of the conference, it is well to recall that the problems of land armaments, submarines, naval vessels under 10,000 tons and aircraft remain. Competition in these types of

armament is still possible without violation of the treaty. The importance of this is emphasized through the growing opinion of professional naval men that even in the absence of international agreement, future navies would have been composed of smaller vessels, because of the increasing difficulty of properly defending super-dreadnaughts from submarines and aircraft.

While the illegitimate use of submarines and the use of poison gases were prohibited it is well to recall that the same prohibitions were recognized under customary international law and the Hague Conventions on August 2, 1914. Too much should not be expected of rules of warfare. Unless framed so that their observance serves the military aims of belligerents better than their violation, they will be of remedial rather than preventive value. They will give the victor a ground of action but will not mitigate the horrors of war.

"We may grant," said Mr. Root in presenting the treaty, "that rules limiting the use of implements of war made between diplomats will be violated in the stress of conflict. We may grant that the most solemn obligation assumed by Governments in respect of the use of implements of war will be violated in the stress of conflict, but beyond diplomatists and beyond Governments there rests the public opinion of the civilized world, and the public opinion of the world can punish."

Far East and Pacific Questions were concerned primarily with China, but Pacific islands and Siberia were also on the agenda.

The absence of Russia from the conference precluded action on the latter beyond a resolution taking cognizance of the Japanese declaration of intention eventually to withdraw its troops from Siberia and northern Sakhalien. No time was stated.

On Pacific Islands the fortification *status quo* provision of the naval limitation treaty has been referred to. More important is the four power pact by which the United States, Great Britain, France and Japan "agree as between themselves, to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean" and "if the said rights are threatened by the aggressive action of any other power to "communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or separately, to meet the exigencies of the particular situation." A subsequently adopted resolution excludes the Japanese home islands from the treaty. Attached resolutions exclude domestic questions from the controversies which may be a subject of discussion under Article I, and reserve the privilege

to the United States to negotiate with reference to mandated islands which are declared within the scope of the treaty. The agreement is to continue for ten years and more unless denounced with a year's notice. Its dual object from the American standpoint of superseding the Anglo-Japanese alliance and protecting the Philippines seems to have been achieved, the first expressly. The treaty is between only four powers and is confined to insular possessions and dominions in the Pacific but in other respects it seems to bear a close resemblance to Article x of the League of Nations Covenant by which

"The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled." Mr. Lodge, however, in presenting the four power pact to the conference on December 10, distinguished it from this article, and in offering the treaties to the Senate on February 10, President Harding said:

"There is no commitment to armed force, no alliance, no written or moral obligation to join in defense, no expressed or implied commitment to arrive at any agreement except in accordance with our constitutional methods. It is easy to believe however, that such a conference of the four powers is a moral warning that an aggressive nation, giving affront to the four great powers ready to focus world opinion on a given controversy, would be embarking on a hazardous enterprise."

This statement, however, leaves some doubt as to the President's interpretation of the pact. If the clauses of the first sentence are separable and the parties are under "no written or moral obligation to join in defense," it is difficult to see why an aggressive enterprise would be any more "hazardous" with the treaty than without it. If on the other hand, the final qualification applies to all the preceding clauses, the President seems to imply that there is a "commitment to armed force" provided "our constitutional methods" are followed. Although the latter interpretation is more in accordance with the language of the pact and of the President's statement, the former is in accord with his language earlier in the message, "The four-power treaty contains no war commitment" and has been definitely accepted as the American interpretation by the Senate reservation.

Closely connected with this treaty are the negotiations over the island of Yap between the United States and Japan, conducted independently

of, but concurrently with the conference. These began in the summer of 1921 and resulted in a treaty signed February 11, 1922. By this treaty the United States recognizes the Japanese mandate in Yap under the League of Nations, and Japan agrees to accord the United States full rights in all that relates to cables on the island. The United States, Great Britain, France, Italy, Japan and the Netherlands have also practically concluded a negotiation dividing the former German Pacific cables between the United States, Japan and the Netherlands.

The Washington treaties with their appended resolutions go immeasurably beyond earlier agreements in respect to China. The tariff treaty does not restore Chinese tariff autonomy but does provide for periodic revisions to assure China five per cent on imports, in exchange for which China agrees to abolish likin or domestic sales taxes, and to fulfill existing treaties with respect to taxation.

The more important Chinese treaty begins by reiteration of general principles in respect to China formulated by Mr. Root and resembling the Hay statements. The powers other than China agree:

"1. To respect the sovereignty, the independence, and the territorial and administrative integrity of China.

"2. To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government.

"3. To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations through the territory of China.

"4. To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly states, and from countenancing action inimical to the security of such States." The powers agree to refrain from making treaties, agreements, arrangements or understandings "either with one another or individually or collectively with any other power or powers which would infringe or impair" these principles. A more substantial guarantee is given to the last two principles through the creation of an international board of reference in China to investigate and report whether future concessions in China are in accord with the open door. The original proposal to give the board authority to consider past as well as future concessions failed of acceptance, though a resolution provided that past concessions be published. China herself agrees not to permit unfair discrimination in economic matters, particularly railways.

Various agreements, resolutions and declarations connected with the treaty aim to give concrete application to the first two of the Root principles. Some of the resolutions are considered within the scope of executive agreements and so were not submitted to the Senate for ratification. The Shantung treaty between China and Japan greatly promotes restoration of the territorial integrity of China. Japan agrees to restore the leased port of Kiau Chau and to sell back the Tsing-Tao-Tsinanfu railway for Chinese treasury notes redeemable in fifteen years or, at Chinese option, in five years. Japan is to have a traffic manager and chief accountant under a Chinese managing director until payment is complete. Following announcement of this treaty, Mr. Balfour declared the British willingness to restore her leased port of Wei-Hai-Wei to China. France indicated a willingness to negotiate for the restoration of Kwang-chau-wan. If these negotiations are successful the Japanese lease of Port Arthur and part of the Liaotung Peninsula and the British lease of Kow-Loon near Hong Kong would alone remain. China declared her intention to make no more leases. Aside from the two leases, the British island of Hong Kong, the Portuguese port of Macao and the Japanese Island of Formosa and privileges in Manchuria remain as subtractions from the territorial integrity of China as she existed before contact with Europe.

The administrative integrity of China gained through resolutions providing for withdrawal of foreign postoffices by January 1923, and of unauthorized foreign radio stations; for a commission to report on the practicability of removing exterritorial jurisdiction, and for a consultation looking toward the removal of foreign troops in China. In the Shantung treaty Japan agreed to withdraw troops from that area and the powers requested China to reduce her military forces. Japan also declared her willingness to abandon group five of the twenty-one demands of 1915 which China had never accepted.

Though China has by no means regained full territorial and administrative integrity, yet substantial steps in this direction have been taken. The United States will have less cause to worry about the Philippines, agreement has been reached on the vexing problems of Yap and the Pacific cables, and the Anglo-Japanese alliance has been superseded. Made in 1902 against Russia, renewed in 1905 and 1911 against Germany, it seemed in 1921 to have no objective unless the United States. Yet to denounce it after the loyal observance by Japan during the World War would hardly comport with British honor. The addition of France and the United States seemed the easiest way out and this was achieved by the four power pact.

Association of Nations. The problem of an association of nations was emphasized in the Washington conference because of the struggle in the United States over the League of Nations. President Harding and Senator Lodge had voted for the league with reservations while Senator Underwood had voted for it without reservations. Secretary Hughes and Mr. Root had openly favored the league in public speeches and had signed a letter on October 14, 1920, with twenty-nine other prominent Republicans urging the election of President Harding as the shortest route to American entry into the league. The Republican platform subsequently adopted, contained a clause drafted by Mr. Root favoring an association of nations, but without assuming a definite position on the league.

All of the powers in the Washington conference except the United States were members of the league and most of the delegates, including Messrs. Balfour, Viviani, Schanzer, Koo, and Karnebeek had taken a prominent part in its work, notably in the discussions of armament limitation at the Second Assembly of the league which ended a few weeks before the Washington conference met. Nothing, however, was said about the league in the conference deliberations, though the United States recognized that organization through recognition of the Japanese mandates under it in the Yap treaty negotiated at the same time.

On November 25, President Harding suggested to a group of newspaper men that the limitation of armament conference might well furnish a precedent for future conferences, thus creating a loose association of nations, and in his concluding address on February 6 he said:

"Since this conference of nations has pointed with unanimity to the way of peace today, like conferences in the future, under appropriate conditions and with aims both well conceived and definite, may illumine the highways and byways of human activity. The torches of understanding have been lighted, and they ought to glow and encircle the globe."

Though no association is formally referred to in the treaties, numerous clauses authorize the calling of future conferences or the establishment of commissions. The functions of these bodies vary from political and administrative to quasi-judicial in character. Thus the United States is to arrange for a conference in eight years to revise the naval limitation agreement. Other powers may call such a conference in emergency and one must be called after a war which has suspended the treaty. A conference to revise the rules of war is authorized, as is one to revise

the Chinese customs tariff. A commission is appointed to consider the question of exterritoriality in China and by the four power pact the powers agree to meet in joint conference if a question arises over Pacific possessions. Finally a board of reference to consider questions under the open door agreement is provided for.

These provisions for future conference are not in any sense a substitute for the League of Nations, with its permanent secretariat, periodical council and assembly, administrative commission and Permament Court of International Justice. The experience of Washington has undoubtedly convinced European statesmen of the utility of the league and of its permanence, whether or not the United States elects to enter it. The league has greeted the efforts at Washington as helpful coöperation in their own work, but they see in it no association of nations which could possibly become a rival.

QUINCY WRIGHT.

University of Minnesota.

Sanctions and Guaranties in International Organization. The idea of a sanction for political or legal regulations ordinarily includes both a measure of force which is deliberately placed behind the terms of a political and legal arrangement by its authors for the purpose of enforcing that arrangement and rendering it effective upon those to whom it is intended to apply, and also a measure of force which in actual fact does stand behind the terms of such an arrangement and tends to render it effective although it has not been placed there by the authors of the pact. It is under the second description of sanction that we encounter the proposition that the basic sanction of any international organization today is to be found in the body of world commerce and world communication which has come into being in the past fifty years. That body of world commerce and world culture has become so considerable in extent and in its complexity as to demand the creation of some international organization to take care of it, and so influential as to provide to any organization which is created its most powerful support. This proposition may be accepted at face value as our starting point.

For this state of affairs in the non-political and non-legal world of trade and travel to have its due effect in the world of politics and government, however, it is necessary for people, first, to become thoroughly aware of the condition of things in the world in which they live, and second, to reflect upon this condition of things so that a body of opinion will be formed which will dictate political and legal action in accordance

with the practical needs of the time. Here is the first defect in the operation of what would normally be the most powerful sanction of international organization today. People do not yet sufficiently realize the unity of the world in trade and in all the interests of daily life for that unity to make itself felt in international politics. Those interested in building up sanctions for international organization should direct their energies first to the task of making people see the facts as they are and acting on them, instead of acting on the basis of ideas and principles long since obsolete as descriptions of the facts of international life.

Most people, of course, are beginning to be aware of the condition of affairs to which reference has just been made. This frequently leads them to take a general attitude far more favorable toward international organization, as an idea or a general program, than they were wont to take in the past. This does not, however, constitute a denial or reversal of the conclusions of the preceding paragraph, for the ensuing action reveals a second defect in the mechanism of sanctions in international organization. Those very people who are most ready to admit that the world has changed and that international organization is needed today as it was never needed before, are the first to balk when they are asked to approve a specific step in the process of setting up a world government and providing it with power to accomplish its purposes. The result is that we have much talk today about the need and the desire for international organization and not very much of the thing itself. It should be the task of those interested in the creation of effective world government to point out to the good people who preach international coöperation but are afraid to join in the practice thereof that what is needed now is not the general idea of international government but government actually applied to the details of international life.

Suppose, then, that some erstwhile opponent of international organization, or some Platonic but ineffectual supporter, were to rouse himself by a sudden effort of the will and inquire, in a challenging voice: "Well, then, what would you have? An international army and navy?" What should be the reply of the internationalist to this most obvious question in connection with the problem of sanctions? It seems that he should begin by pointing out that in most cases there exists ample force to render international organization effective without the employment of armed might, if only it were possible to bring that force into contact with the subject matter of, or the parties to, international disputes. That force is to be found in the facts of world trade and finance mentioned at

the outset and in the force of opinion produced by these facts. That force of international public opinion is ineffective today mainly because the means are lacking for bringing it to bear in the crises of international life. What is needed as much as anything else is such a hearing and discussion of the international dispute when it arises as will enable interested and intelligent students and critics of international politics in all countries and the members of the business and financial communities to bring their influence to bear upon the parties. Evidence in support of this conclusion is to be found in the resistance which the apostles of national independence make to any proposal for conference or arbitration on the motion of one party to a dispute. They fear to put themselves in the path of the force of opinion which could operate without fleets or armies if it were merely given the chance. This means that the problem of sanctions is at this point simply one phase of the problem of jurisdiction, and that the friends of effective international organization should lend all their efforts to securing international agreements for hearing and arbitration upon the motion of one party, thus bringing into play the most powerful sanction available and the one which must be relied upon for final support in any event.

If space permitted, we might go into the question of just how this force of opinion operates upon the parties to a dispute. Why or how was the League of Nations able to make headway with the disputes over the Aaland Islands, Silesia, and Albania without the use of armed force and with all parties to those disputes perfectly aware that the league was without armed force and that the powers supporting the league would never be willing or politically able to employ armed force for the enforcement of its decisions? Because the parties were afraid to draw upon themselves the disapproval of those powers and of people in Europe in general, with the diplomatic and political and commerical hostility which that would entail.

When we turn to the practice of the past and inquire concerning the cases where the states have been willing to create sanctions in the shape of armed force in support of definite arrangements and to give each other specific guarantees backed by armed force, we discover how far we are from anything like substantial accomplishment in that direction. Formal guarantees in the past have only pretended to extend to independent political and territorial existence—the most elementary item in state life! When we think of all the minute rights and privileges which are guaranteed to the individual citizen by the state over and above the elementary right to exist we see how far we have to go in international

organization before we shall reach a secure and protected state existence. Even where state independence and territorial possessions have been guaranteed in the past this has commonly been done by one or two states rather than by the family of nations acting as such, and the terms of the guaranty have been such that the state guaranteed was far from being able to count upon automatic action by the guarantors when the need arose. In view of these facts, it is not too much to say that down to 1919 there never existed a general guaranty of any kind among the states of the world, and that today there still exists no effective guaranty and no pretense of guaranteeing anything beyond the bare minimum of existence.

Are people ready for anything more? Are they even ready for the limited guaranty of Article x? The people of the second and third class powers seem to be ready for the latter and, judging by the way in which the smaller powers have responded to the invitation to adhere to the statute for the new permanent court on terms which amount to an agreement for obligatory arbitration, for some steps beyond Article x. It is not so evident that the people of the great powers are ready for such steps, and there is some doubt whether the people of all the great powers are ready for the elementary step involved in Article x, much less an Article x which provided for automatic action on the guaranty instead of mere consultations and recommendations. These powers and their people count on being able to take care of themselves, and they do not, therefore, see any great need for the establishment of such guaranties. They do not count the cost of war produced by the general instability of the international system as one of the arguments in favor of setting up such a guaranty, but, rather, as an argument for evading what appears to them just one more danger of, and even an invitation to, war. And their politicians, with whom will rest the decision for peace or war so long as no system of automatic guaranties is established, are opposed to any step which would hamper the national discretion and their own opportunities for influence.

When we turn more specifically to the United States we find all these conclusions reënforced by the facts in the case as it affects our own country.

The United States is not situated so close to other countries and is not so dependent upon other countries as to feel keenly the way in which the different parts of the world have come, in general, to be dependent upon one another for their daily existence. Qualifying this, but qualifying it in only a relatively unimportant degree, the influence of European

economic facts and conditions upon American industry and commerce since 1914 has convinced many Americans who were formerly of an opposite opinion that some international organization is necessary and that the United States should join some association of nations. But such an association must not be of the tremendously powerful type of the League of Nations! We are for international coöperation as an idea, but we are afraid to give that idea, or any embodiment of that idea, real power and the right to use that power. We talk about a court "with teeth," but we prefer our league to be toothless. For this distinction there is a certain amount of explanation which we shall notice in a moment, but the main fact in the situation is already clear: it is the question of sanctions that determines the reaction of the people of the United States toward the league. They are afraid, it seems, either to join in the giving of guaranties which they may have to back up with their power and might, or they are afraid of having guaranties invoked against them. Thus our reaction in the specific question of sanctions is a denial of our attitude on the question of international organization in general and makes us appear to be either hypocrites in our professions or mere phrase-mongers in our beliefs.

The reasons for the position of the leaders of American opinion in supporting the general idea of international organization but refusing to support the specific embodiment of that idea in the league, and for the desire for a court with teeth while preferring to leave the league without any means of making its actions effective, is to be found in the belief that the league will not, in general, base its decisions or rulings upon legal justice but upon immediate convenience, expediency, and diplomatic and political advantage and influence. Leaving out of account the new permanent court, this belief is probably sound. But what is the relation between this fact and the problem of sanctions? It is simply the consideration already mentioned converted into a new form: the leaders of opinion and the politicians in the United States believe that we shall be able to take care of ourselves in all cases where a settlement must be reached by the methods of diplomacy, provided that we are allowed to look out for our own interests in such cases and are not hampered by being tied up to some scheme for general conferences and discussions by all the powers. They are willing for the United States to commit itself to action for the enforcement of international agreements only where those agreements can be made to take the form of legal decisions based upon general law; in these cases they are forced to recognize that the maintenance of the general law of

nations is a thing in which all are interested even in those disputes where their rights are not directly involved, and a task which can be accomplished only by the constant coöperation of all the nations.

It is here that the weakness of such a position becomes apparent. For the object to be served in the maintenance of the authority of the league in its non-legal actions, or in the maintenance of the authority of any international organization in such actions, is the maintenance of the idea of international authority in general, as opposed to nationalistic anarchy, and this idea of international authority is the only foundation which can give to the law of nations itself that authority which it must have if it is to command respect. The idea of individual national consent to each and all of the rules of international law is too fragmentary and insecure a foundation to support a really binding and effective system of law. By undermining the general idea of international authority as embodied in the league and in denying it their backing, our statesmen and political leaders have helped to undermine the foundations for that system of international law in the name of which they have opposed the league.

Of more immediate effect in turning the course of opinion in the United States against the giving of guaranties of territorial integrity through the league or any international organization, perhaps, has been the fact that that question has been presented in an unfortunate way by those charged with the task of securing the consent of the American people. The supporters of the league have allowed the question to be discussed as one of giving protection to this nation or that nation, rather than to all nationals, or, rather, to that one of all the nations which happens to need to be protected at the time. Now it may not seem to be a great improvement upon the first form of the question, from the point of view of one who is interested in the reduction of the obligation involved, to talk of guaranteeing all nations instead of one. In reality it constitutes a considerable reduction, for it converts an obligation to act on behalf of one nation, and for the benefit of one nation, into an obligation to act on behalf of, and for the protection of, the interest of all the nations, the community of nations as a whole, including ourselves, in the secure enjoyment of independence and territorial integrity. What is really involved is a participation in a general guaranty of general international law and order, and this aspect of the matter has not been sufficiently stressed in inviting the American people to join in the guaranty of the league. The politicians have been allowed to distort the issue of sanctions and guaranties in relation to international

organization until it is going to be a difficult thing to get the matter clear again in the public mind.

To what conclusion must we come after a review of the circumstances? It seems that we must agree that the problem of sanctions is not so simple as that of merely organizing an international army and navy for use in enforcing the decrees of the league or some other international organization, but that it ramifies into the questions of international jurisdiction and the nature and basis of international law proper; that the smaller nations present relatively little difficulty in the settlement of the problem; that among the great powers the United States stands as the greatest opponent to the creation of sanctions and guaranties; and that this is due in part to an attitude natural to all the great powers, but in part also to a curious perversion of thought for which the legalists among us are primarily responsible, as well as to a distortion of the issue which the ineptness of the advocates of international guaranties has allowed the politicians to create and perpetuate. Other great powers are about ready to give and take guaranties and sanctions; this is not so much because they feel that they, individually, need such guaranties directly, but because they do feel that they need the condition of stability and respect for international authority which can be created only in this way. They are not, moreover, manifesting any great anxiety concerning any loss to their sovereignty and independence by such action. When the issue is properly presented to the people of the United States they will take the same attitude.

PITMAN B. POTTER.

University of Wisconsin.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

University of Wisconsin

The chairman of the program committee of the American Political Science Association for 1922 is Professor Robert J. Crane of the University of Michigan.

Reprints of "The Study of Civics," which appeared in the February issue of the REVIEW, may be had by applying to the secretary of the American Political Science Association, Madison, Wisconsin. This document comprises the report of a committee on instruction in political science of which Professor William B. Munro, of Harvard University, is chairman.

A list of doctoral dissertations in political science now in preparation, supplementary to the list published in the REVIEW in February, 1920, will be printed in this department in the August issue.

Professor Edwin M. Borchard, of Yale University, is giving the courses at Columbia University ordinarily given by Professor John Bassett Moore, now sitting as a member of the Court of International Justice at The Hague. The arrangement will continue next year.

Dr. Charles A. Beard will deliver a series of lectures at Dartmouth College on the Guernsey C. Moore foundation. The lectures will deal with social, economic, and political conditions in Europe.

Professor W. W. Willoughby, of Johns Hopkins University, has been granted leave of absence for the first semester of next year in order to enable him to visit South Africa and India. Professor Willoughby served as technical expert to the Chinese delegation during the Washington Conference and is publishing through the Johns Hopkins Press a semi-official report entitled *China at the Conference.*

Baron Sergius A. Korff, professor of political science at Georgetown University, delivered in April a series of lectures at Northwestern University on the Norman Waite Harris foundation. The lectures dealt with the general subject of autocracy and revolution in Russia.

Professor S. Gale Lowrie, of the University of Cincinnati, has been granted leave of absence for next year and will spend the year in China.

Professor Henry Jones Ford is on leave of absence from Princeton University and is completing his volume on representative government. He expects to spend next year in Italy.

Among summer session appointments in political science are: Professor W. J. Shepard, of Ohio State University, at the University of Minnesota; Professor F. W. Coker, also of Ohio State, at Leland Stanford University; Professors P. B. Potter, of the University of Wisconsin, and R. T. Crane, of the University of Michigan, at the University of Chicago; Professor C. E. Merriam, of the University of Chicago, at Columbia University; and Professor T. H. Reed, of the University of California, at the University of Michigan.

Mr. E. E. Witte, secretary of the Wisconsin industrial commission, has been appointed to the directorship of the Wisconsin legislative reference library, in succession to the late Dr. Charles McCarthy.

Dr. Leo S. Rowe, president of the American Political Science Association in 1921, has been granted the honorary degree of doctor of laws by the University of Cuzco, Peru.

Professor W. B. Munro, of Harvard University, is on leave of absence during the second half-year and is spending some time in California.

Mr. R. N. Richardson, professor of history and government in Simmons College (Texas), is on leave of absence while completing his graduate work at the University of Texas.

Mr. Frederick D. Bramhall has been obliged to discontinue his work at the University of Chicago on account of a breakdown in health. His present address is Sun Mount Sanitorium, Sante Fé, New Mexico.

Mr. George C. Sikes, secretary of the Chicago Bureau of Public Efficiency, is giving Mr. Bramhall's course in municipal government at Chicago.

Professor Leonard D. White, of the University of Chicago, has recently completed for the National Research Council a survey of the scientific research activities of the various bureaus and agencies of the state of Illinois.

Professor Albert H. Washburn, of Dartmouth College, has been appointed minister to Austria and left about the first of April to take up his work. Professor Washburn was at one time a member of the consulate at Magdeburg, Germany. As a member of a New York City law firm, he has specialized in customs cases, and he is now president of the Customs Bar Association.

Professor David Lattimore, of Pei Yang University, Tientsin, China, has joined the Dartmouth faculty to give courses in Far Eastern civilization. He has been an instructor in various Chinese colleges since 1901 and an expert adviser to various government commissions in China.

Mrs. Frank Fearing, formerly instructor in political science at Vassar College, is acting as instructor at Stanford University during the spring quarter.

Professor Charles E. Merriam, of the University of Chicago, recently delivered an address at the University of Wisconsin, under the auspices of the department of political science, on the needs and problems of research in political science.

Professor Harold S. Quigley, who has spent the year teaching in one of the Chinese colleges, will resume his work at the University of Minnesota in September.

Professor O. Douglas Weeks, of Morningside College, will return to the University of Wisconsin next year to complete his graduate work.

Samuel P. Orth, Goldwin Smith professor of political science at Cornell University, died February 25 at Nice, France. After a serious automobile accident a year ago, a series of complications set in and eventually resulted in his death while beginning what was planned to be an extended tour for recuperation. Professor Orth was a graduate of Oberlin College and of the law school of the University of Michigan, and he received his doctor's degree in political science at Columbia in 1903. He practiced law at Cleveland for several years, and also served as president of the board of education in 1904–5 and as assistant district attorney in 1905–8. He became a professor at Cornell in 1912. Always interested in practical politics, he was chosen presidential elector in 1920, and at the time of his death was about to be nominated as a candidate for Congress to fill a vacancy in the 37th New York district. His principal publications are: *Centralization of Administration in Ohio; Five American Politicians; Socialism and Democracy in Europe; Readings on the Relation of Government to Industry;* and *The Boss and the Machine* (*Chronicles of America Series*). At the time of his death Professor Orth was a member of the executive council of the American Political Science Association.

In the "Notes on Municipal affairs" in the February number of the REVIEW, it was stated, in error, that the cities of Terre Haute and Muncie, Indiana, had elected as mayors men who had been convicted in the United States courts for offences in connection with elections. Two such men were nominated at the primary as candidates of their party for the office of mayor; but fortunately neither candidate was elected. It may also be noted that the statute under which one of these men was convicted has subsequently been declared invalid by the Supreme Court of the United States, in the Newberry case.

The annual meeting of the Ohio Academy of Social Sciences was held at Columbus at the middle of April. Professor B. A. Arneson, of Ohio Wesleyan University, presided over the sessions, and Professor W. J. Shepard, of Ohio State University, presented a paper on the movement for reform in local government.

The semi-annual meeting of the Academy of Political Science in the City of New York was held on April 28. The general topic was the railroads and business prosperity.

The American Academy of Political and Social Science holds its annual meeting at Philadelphia May 12–13. The general topic for consideration is the relation of America to the rehabilitation of Europe, one of the sessions being devoted especially to the relation of America to the European political situation.

The Institute for Government Research at Washington has published a booklet describing its varied activities and its publications. Copies may be had on application to the institute.

The third annual meeting of the Southwestern Political Science Association was held at the University of Oklahoma, March 23–25, 1922. One day's sessions were devoted to economic problems of the southwest, and other sessions were held under the auspices of the international relations section, the political science section, and the public law section. Officers for the ensuing year were chosen as follows: Judge C. B. Aimes, Oklahoma City, president; George B. Dealey, Dallas, Texas, F. F. Blachly, University of Oklahoma, and D. Y. Thomas, University of Arkansas, vice presidents; Frank Stewart, University of Texas, secretary-treasurer, and H. G. James, University of Texas, editor of publications. The fourth annual meeting will be held at Dallas in the spring of 1923.

The governing board of the Pan-American Union has authorized the holding of a Pan-American Conference at Santiago in March, 1923. This will be the fifth in the series of such conferences. The board will prepare the list of subjects to be discussed.

A National Council for the Social Studies completed its organization in Chicago on February 25. Its purpose is to lay the foundations for training democratic citizens; and its sponsors believe that such training can result only from a carefully developed and adequately supported system of teaching in the elementary and secondary schools. Its plan looks to promoting coöperation among those who are responsible for such training, including at least the university departments which contribute knowledge of facts and principles to civic education, and the leading groups of educational leaders, such as principals, superintendents, and professors of education, who develop the methods of handling these facts.

The following officers were elected for the year 1922–1923: L. C. Marshall, professor of economics in the University of Chicago, president; Henry Johnson, professor of history in Teachers College, vice-president; Edgar Dawson, professor of government in Hunter College, secretary-treasurer; E. U. Rugg, Lincoln School, New York, assistant secretary. An executive committee, charged with the general direction of the policies of the association will consist of the officers and the following additional members: C. A. Coulomb, district superintendent, Philadelphia; W. H. Hathaway, Riverside High School, Milwaukee; and Bessie L. Pierce, Iowa University High School.

An advisory board is being formed composed of members selected from: (1) scholars in subjects related to the purpose of the national council—historians, economists, political scientists, sociologists and geographers; (2) national organizations of educational administrators; and (3) regional associations of teachers of history and civics. The function of this advisory board is to bring into the national council the points of view represented and to insure the development of social studies in harmony with the best educational thought and based on the best present practice.

The first task which the national council is undertaking is the preparation of a finding list of those experiments in the teaching of the social studies which now give promise of being useful. This list will aim to make it possible for persons working along parallel lines to coöperate, and to indicate differences of opinion and program for purposes of analysis and discussion.

Those interested in the development of the social studies, whether teachers or others, are invited to communicate with the secretary at 671 Park Avenue, New York City.

James, Viscount Bryce, the well-known British publicist and author, and president of the American Political Science Association in the year 1908, died at Sidmouth, England on January 22, 1922, in his eighty-fourth year. Famed as a scholar, teacher and writer, in the varied fields of history, law, political affairs, and to some extent in natural science, and also well known as a public official and a traveller in many lands, he will be best remembered as a student and analyst of political institutions. His main field of work has been in the democratic governments of the later nineteenth century; and not the least of his contributions have been those relating to the government of the United States.

Third of his name in successive generations to be recognized as scholars and teachers, he had the background of an intellectual family inheritance. Born at Belfast May 10, 1838, he was educated at Edinburgh and the Universities of Glasgow, Oxford (A.B. 1862; D.C.L. 1870) and Heidelberg. He was an honorary fellow of Trinity and Oriel colleges at Oxford, and received honorary degrees from more than a score of universities in Great Britain, the United States, Germany and Australia. Admitted in 1867 as a barrister of Lincoln's Inn, he continued in practice until 1882. From 1870 to 1893 he was Regius Professor of Civil Law at the University of Oxford.

He was elected a member of Parliament from Tower Hamlets in 1880, and represented the Scottish burgh of Aberdeen from 1885 to 1907. He held a number of public offices: under secretary for foreign affairs, 1886; chancellor of the Duchy of Lancaster, 1892; president of the board of trade, 1894; chief secretary for Ireland, 1905; and ambassador to the United States from 1907 to 1913.

His extensive travels in all parts of the globe included the United States, Transcaucasia, South Africa, South America and Australia.

A voluminous writer in the many fields of his varied interests, his more important books form a considerable library. These include: *The Flora of the Island of Arran*, 1859; *The Holy Roman Empire*, 1862; *Report on the Conditions of Education in Lancashire*, 1867; *The Trade Marks Registration Act, with an Introduction and Notes on Trade Mark Law*, 1877, *Transcaucasia and Ararat*, 1877; *The American Commonwealth*, 1888; *Impressions of South Africa*, 1897; *Studies in History and Jurisprudence*, 1901; *Studies in Contemporary Biography*, 1903; *The Hindrances to Good Citizenship*, 1909; *South America: Observations and Impressions*, 1912; *University and Historical Addresses*, 1913; *Essays and Addresses in War Time*, 1918; *Modern Democracies*, 1921; *International Relations*, 1922; and *The Study of History*, 1922.

His works as historian, jurist, statesman and traveler, all show his fundamental interest in political institutions, and explain his appreciation of the relations between political problems and other fields. His most extensive and best known contributions are in the field of government. *The American Commonwealth* not only gave to British and European readers an adequate account of American institutions, but was of even greater value in this country in furnishing a broader basis for instruction and suggesting new fields of investigation. *Modern Democracies* forms the culmination of his lifelong studies, and presents the keen analysis and guarded conclusions of a sympathetic but candid observer of popular government.

In his address as president of the American Political Science Association, he stated his opinion that politics could be considered an experimental and a progressive science, but not an exact science, such as mathematics or mechanics, or even to the same degree as meteorology. Two suggestions to younger students throw light on his own methods: (1) "Keep close to the facts. Never lose yourself in abstraction." (2) "Make the treatment, I will not say popular, for that is sometimes taken to mean superficial, but at any rate attractive."

Bryce's contributions to political science form a prominent landmark in the development of this important branch of knowledge, and his works have done much, not only to improve the study and teaching of political institutions, but also to aid in improving the standards and methods of the political systems he has described. His work was that of a keen sighted observer, with a well trained mind and a broad knowledge of history, law and the physical facts of the world; and his studies were much more comprehensive than those of Darwin in collecting and analyzing the materials for his scientific discoveries. If these studies have led to no such fundamental principle as that of natural selection, this may be due to the more extensive scope or the greater complexity of the inquiry; or perhaps the student of politics has been more cautiously scientific than the biologist, in not committing himself to a hypothesis which later investigations might require to be subject to substantial modifications.

University Center for Research in Washington. A score of scholars, resident in Washington and representing practically all of the social studies, have associated themselves for the establishment and conduct of a University Center for Research, whose purpose is defined to be "to promote and facilitate research in archives, libraries, and other collections located in the District of Columbia, on the part of students in the graduate departments of American and foreign universities and of others." Control of the center is in a board of research advisers, organized in a committee of management and a series of technical divisions, of which five have thus far been established, i.e., political science, international law and diplomacy, history, economics, and statistics. Drs. L. S. Rowe and W. F. Willoughby represent political science on the committee of management and are in charge of the political science division, and Dr. Rowe and Dr. Paul S. Reinsch are, with others, in charge of the division of international law and diplo-

macy. The history and nature of the enterprise are set forth as follows by the founders:

The organization of the University Center for Research in Washington is the outcome of a movement originated in May, 1916, when representatives of the departments of history and political science in several of the larger universities met in conference at Columbia University and appointed a committee to formulate a plan for the establishment in Washington, through the coöperation of American universities, of a residential center for graduate students who should desire to conduct researches in the archives, libraries, and other collections of the national government. Such a plan was drawn up and was approved by a second conference of university representatives held in Cincinnati in December of the same year. The entrance of the United States into the war a few months later, however, made it necessary to postpone indefinitely the execution of the project.

In December, 1920, the American Historical Association and the American Political Science Association appointed a joint committee for the purpose of reviving the plan and of carrying it out with such modifications as might have become desirable because of changed conditions. As a result of the activities of this committee two conferences of scholars resident in Washington were held in the fall of 1921, at which articles of organization were adopted.

Scope and Purpose. The University Center for Research in Washington is maintained by a voluntary association of scholars, organized in a self-governing body styled the board of research advisers. Through its committee of management this board is in contact with the interests most concerned in the objects of the university center; the membership of the committee includes representatives of the American Council on Education, which is the organ of the various associations of American universities and colleges; of the American Council of Learned Societies, which represents organized scholarship in the humanistic fields of study; and of the National Research Council which, while chiefly representative of the physical and biological sciences, is also concerned with the organization of research in general.

The purpose of the university center is the promotion of research by rendering aid, information, and advice to graduate students and other investigators who desire to make use of the archives, libraries, and other collections in Washington. It is the hope of the board of research advisers that they may thus make more effective to scholarship the provisions of the act of Congress of March 3, 1901, namely:

That facilities for study and research in the government departments, the Library of Congress, the National Museum, the Zoological Park, the bureau of ethnology, the fish commission, the Botanic Gardens, and similar institutions hereafter established shall be afforded to scientific investigators and to duly qualified individuals, students, and graduates of institutions of learning in the several states and territories, as well as in the District of Columbia, under such rules and restrictions as the heads of the departments and bureaus mentioned may prescribe.

The activities of the university center are for the present limited to the fields of history, political science, economics and statistics, and international law and diplomacy. Eventually it may develop into a residential center for investigators in all fields of learning.

In its present form the university center represents the organization of a service rather than of an institution. For the rendering of this service the board of research advisers is organized in divisions each of which is composed of scholars who are qualified, by reason of their own researches, their familiarity with certain classes or groups of material, or their official positions, to render effective aid to investigators in certain fields of study. This aid takes the form of information respecting the location of desired material, assistance in securing access to it, and, in the case of graduate students, of advice respecting its utilization. It does not, however, include the giving of instruction, nor training in methods of investigation, nor supplying purely bibliographical information which should be available in any large library. It is assumed that graduate students who desire to work under the auspices of the university center will already have received the instruction and training necessary to qualify them for work of research, and that they shall have reached a stage in their work where recourse to the collections in Washington has become essential to its further prosecution.

Opportunity for Research in Washington. It is unnecessary to dwell at length on the opportunity for research in Washington. In those fields of study to which the service of the university center is for the present limited this opportunity is unequalled, as indeed it is also in many other fields. The administrative and technical archives of the various services of the federal government are indispensable to the student of American history and politics. The collections of the library of Congress, especially in its divisions of manuscripts and public documents cannot be duplicated, and there are numerous

smaller libraries, such as those of the department of state, of the department of commerce, and of the department of labor, to mention only a few, which contain material specially collected and not readily available elsewhere. The location in Washington of such institutions or organizations as the Institute for Government Research, the Carnegie Endowment for International Peace, the American Society of International Law, the United States Chamber of Commerce, the Bureau of Railway Economics, the Carnegie Institution with its department of historical research, and the American Historical Association, as well as the remarkable extension during the last two decades of economic and statistical research within the government services have made the capital one of the most important centers in the United States for work in the social studies.

Regulations of the University Center. The university center is now ready to offer to investigators the services described above. It should be understood that access to governmental collections, especially to administrative archives, is subject to official regulation or discretion and cannot be assumed. For this reason advance correspondence with respect to proposed investigations is desirable. The services of the university center are rendered without charge or fee, subject to the following conditions:

I. Each student desiring to work in Washington under the auspices of the university center, must make direct application by letter to the secretary, stating briefly the subject of his investigation, the stage reached in it at the time of making application, and as definitely as possible the nature of the work which he proposes to do in Washington. This application must be accompanied by a statement from the dean of the school in which the student is enrolled to the effect that the proposed work in Washington is undertaken with the approval of the competent university authorities. It should also, if possible, be accompanied by a letter from the officer of instruction under whose direction the student is conducting his investigation, containing such information about the work as may be useful to the technical division of the board of research advisers to which the student may be assigned. Upon arrival in Washington the student must register at the office of the secretary, and must then call upon the member of the board of advisers to whom he shall have been referred. Advisers will keep a record of the work of students assigned to them and will make a report thereon to the secretary. A copy of the report on the work of each student will be sent to the dean of the school from which he comes.

11. Students in foreign universities and other investigators who desire to avail themselves of the services of the university center should make application by letter to the secretary, stating the nature of the work which they propose to do in Washington. Upon arrival they should register at the office of the secretary and will be referred to the appropriate member of the board of research advisers. No record will be kept of their work nor will any report be made on it.

Political Research.[1] Last year in a paper entitled "The Present State of the Study of Politics" I undertook to discuss some fundamental aspects of the scientific study of government. Further consideration will be given here to some of the vital problems of political research.

It seems appropriate to begin with the personal equipment of the professional students of politics. We may ask, is the modern equipment of students of government superior to that of the earlier days? Is our equipment abreast of the mechanical opportunities and the organization facilities of our time? For some time I had thought of Aristotle as working alone, but recently I found a statement to the effect that the Greek philosopher had under him scores of men who scoured all of the countries of the world for political information to be placed at his disposal. In view of the fact that Aristotle was the teacher of no less a personage that Alexander the Great, it is conceivable that he may have had a sufficient influence with his powerful pupil to bring this about. In this respect none of us is as well off as was Aristotle.

Certainly we cannot contend that the students of politics are as well equipped for purposes of inquiry as the mechanical and organizing tendencies of the time would warrant. In these days of the improvement of means of communication and of efficient organization of means of collecting facts, we have fallen behind the possibilities of our times, and that by a very long interval. Our libraries are fortunately large and well-equipped as a rule, but not all of the material necessary for the student is found within the walls of the library.

Richard S. Childs has recently criticised the students of political science for the lack of detailed studies of the practical workings of governmental operations; and his criticism although overdrawn should be taken very seriously. Field work is not a luxury, but a prime necessity in the study of government. But, as he himself explains, professors are seldom overpaid and they do not have the funds necessary for

[1] This is a condensed statement of the discussion of the subject at the Pittsburgh meeting of the American Political Science Association, in December, 1921.

traveling and for observation in leisure time. Secretarial, stenographic assistance, trained helpers are also lacking as a rule, and this adds to the difficulty of the research man in the field of politics. In funds for field work and in the services of assistants and helpers we have fallen behind our brethren in the laboratories and in that field of work known as natural science; and what is more we have fallen behind the possibilities and needs of our day. Unless we can develop personal equipment superior to that now commonly found, our progress will be very seriously hindered.

There exists a pressing need for better facilities in the way of digests and analyses of laws, ordinances and administrative acts. At present the collection of this material is haphazard in the extreme, and follows no settled plan. How do we learn about the laws of the various states or the ordinances of our many cities? Only by writing personally in the main, thus duplicating effort and obtaining incomplete results in many cases. In the reporting of legal decisions, the whole process is admirably organized, and the practicing lawyer finds on his desk in very short time all of the very latest cases. But not so the unfortunate student of commission government, or the primary system, or the development of the budget. He must find his material as best he can, relying on scattered agencies and supplementing their activities with his own. Crop reporting has been reduced to an art and the latest information obtained by highly skilled observers, scouring a thousand fields, is wired at once around the world. If one-tenth of the amount spent on crop reporting were expended on information about the great crop of political facts, how fortunate we should consider ourselves. But in the case of the lawyer's decisions and of the grain prospects there is a direct commercial motive, while in the case of political information there is no such direct result in sight. Indirectly, what tremendous possibilities are involved in the accurate observation of the outcome of human experiments such as are now going on in many parts of our country and of the world.

Not only does this observation apply to the gathering of laws and official acts, but still more to the observation of political phenomena. For this purpose a staff of well-trained observers, with objective point of view, keen insight and balanced judgment, is needed, in order that the student may receive their reports and from them glean the tendencies and directions of the phenomena of the day; and learn also of the general laws and principles involved in these processes. The failure to do this field-work—to collect these facts at the time the events occur—is one of the very weakest spots in the present-day organ-

ization of political inquiry. While scientific expeditions are being equipped to cover all parts of the world and for all sorts of objects, the tremendous human experiment of democracy going on before our very eyes is not subjected to any process of scientific observation at all adequate to the needs of the occasion, and to the scientific possibilities in the case. It is imperatively necessary to find funds for this purpose, if intelligence is to play its proper rôle in the conduct of human affairs.

But there are questions of political research that go deeper down than the personal equipment of the investigator, important as that is, or the inadequacy of the fact-collecting machinery, defective as that may be. To what extent are we advancing in the technique of inquiry? Are we progressing in range of observation, in accuracy of observation, and are we moving in the direction of scientific inference and deduction from the observations made? Professor Robinson has raised the question why Aristotle's natural science is so far out of date while his social science is still quoted with some respect. Is this due, he asks, to the fact that Aristotle in his social science so far outstripped natural science that the latter is just now catching up, or is it due to the fact that we have not progressed as rapidly as might be in the field of social sciences? He inclines to the latter answer.

Politics to a great extent has been the rationalization of group disciplines, prejudices, hopes, depending from time to time on the vicissitudes of the group. Latterly, politics has become more historical and descriptive in character, but still deeply tinged with the propaganda of the writer's favored group. The complicated relations of politics and of the social sciences have thus far baffled the efforts of the investigators to reach the inner secrets, which mother nature in so many other cases has been obliged to yield, unwillingly it seemed, to the relentless pursuit of tireless investigators.

Is politics making use of all the advances in human intelligence which the social or natural sciences have brought into the world in the last few generations? Astronomy, chemistry, physics, biology, and in later days psychology, have made rapid progress—so swift indeed that we are apt to find difficulty in keeping pace with a procession where the fundamental categories of time and space are challenged, and the atom, the ion, the electron, throw the whole material world into a flux where all seemed stable and known. Ethnology, anthropology, social psychology, geography, archaeology, are all busy with their masses of material, with new insights and with new light on human nature.

Politics has need of the eyes of Argus to see all that is happening within or near its own domain. Are we really keeping pace with these new developments? How effectively are we using human intelligence in the struggle to direct the common affars of our swift-rushing world. It may be questioned whether knowledge of juristic methods alone and of the external forms of government is adequate to cover the case. Aristotle certainly wove the science of his day into his political thinking. If we go back to John Locke, the great apostle of the English Revolution, whose doctrines to a large extent are still the foundation of the political thinking of the Anglo-Saxon peoples, we find that he was a philosopher, an educator, a physician by training, an anthropologist in the sense that he was abreast of the developments of his day, according to Myres in his *Influence of Anthropology on the Course of Political Science*. With this background, he was able to make an effective interpretation of the political thinking of his time, although the scientific aspects of his work are secondary.

Particularly we may ask whether we are sufficiently in touch with such practical groups of workers as the psychologists and the engineers. It has been said that the country will be governed and the political science written by these groups. If they can improve existing conditions, God speed them. But perhaps we have something to offer them as well as to receive from them. Perhaps in the union of these different disciplines will be found the most fruitful combination. Perhaps from these different elements in successful reorganization will come the political science of the future in which the intelligence of the time may be more successfully applied to the control of our common affairs.

It is worth raising the question whether we are doing all that is possible to keep the social sciences abreast of the rapidly moving times in which we live. In the evolution of science it may well be that exact knowledge of human relations may come last, waiting upon the development of seemingly less intricate relations; but that, if true, would not constitute an adequate reason for lagging too far in the rear. Indeed it is not demonstrable that political behavior is really more complex than the atom, once regarded as simple but now appearing to be a miniature cosmos in itself. A few weeks ago I listened to a discussion by a mathematician in which he outlined the process by means of which a number of scientific discoveries had been made. Some two hundred of these he had traced through, although he did not favor us with all of them. It was a fascinating study of the

application of human intelligence. Of course one science need not and cannot slavishly follow all the methods of another. Mathematics, physics, chemistry, biology, psychology, all work out their own salvation. But important insights and suggestions may often be derived by comparison of various processes of observation and inference. Of special interest and value are the ways in which instruments for precise measurement have been devised by the human intelligence and applied to the needs of the various arts and sciences, thus furnishing comparable data for the use of various students. The microscope, the telescope, the spectroscope, did not spring full-armed from the brain of the first investigator who caught the idea, but on the contrary were the products of long and painful processes of experimentation, often seemingly futile and barren for long periods of time. When something like exact measurement of recurring processes begins, we are on the way to exact knowledge, to scientific verifiable inference. It is natural to inquire to what extent the process has been applied to the study of political behavior.

Possibly it might be useful to survey a generation of political thought and observe what progress has been made during that time. What new discoveries, inventions, improvements in method have been made during the given time? What advances were made in the next preceding period and so on, tracing in detail the evolution of the progress in intelligence in the field of social, or in our case of political, relations. Perhaps a recapitulation or résumé of advances in fact, method and principle, with a forecast of the next steps, might be of value to the professional students of government. At any rate, it would be interesting to see such a survey made for the last thirty and the next preceding thirty years. It might help us to get behind the external framework of government into the vital forces within these forms—the processes which recur without as much variation as appears in the outer forms or shells of political life.

Without attempting to survey the field systematically, of course impossible in the brief limits of this informal discussion, it might be worth while to speak of a few special types of inquiries in the political field.

We might consider the scientific study of citizenship. In one of my courses I have found it useful to inquire into the genesis of political opinions and attitudes, into the circumstances under which they are developed; how they come and how they go. Incidentally it appears that most political opinions are fixed long before students arrive at

the gates of the university, and these opinions are changed or modified only with the greatest difficulty. From one point of view, the teaching of citizenship may be a form of group discipline or propaganda; but it has also its scientific aspects, especially when various groups are compared. We may well ask what are the specific qualities of citizenship which it is proposed to teach; whether there is a standard of "good" citizenship upon which in a given group there is a general agreement. We may ask what are the requisites of citizenship? Do they relate to information, to investigation, to judgment-formation, as to persons and policies; to selfish and social types of reactions? What are the obstacles to "efficient" citizenship? Are they physical, psychical, social or economic? Can these obstructions be located and diagnosed, and can they be measurably trained and controlled? Can scientific politics help at this point by showing the constantly recurring processes by means of which political attitudes and characteristics are determined and how they may be modified? These are points at which the scientific development of political inquiry might be of the very greatest political service, and where the collateral inquiries should add to the store of human information regarding the political characteristics and behavior of mankind.

Among more mature citizens might not a study be made not only of the extent of non-voting, but of the motivation of voting and non-voting; of the characteristics and limits of "political" interests; of the means of developing and controlling such interests? Would it not be of great value in scientific and the practical understanding of the body politic? Can we diagnose the reasons why twenty-nine of fifty-four million adult American citizens did not vote at the last presidential election? And if so, can we prescribe anything that will help the patient?

In a much larger field would it not be possible with the aid of the psychologist to ascertain with some degree of accuracy the political and social characteristics of the several nationalistic groups? What is an Englishman, a Japanese, a German, a Frenchman, an Italian, an American, politically? Are there characteristic differences which are measurable? Are there broader differences which are measurable? Are there broader differences between individuals within these groups than between the groups themselves? How far are these attitudes or characteristics or predispositions in the nature of biological inheritances, and how far are they handed down by the groups as part of the training and education of the members of the group? To what

extent if any, are these qualities capable of modification and control and by what means? These are subjects of fascinating interest and also of fundamental importance to human welfare in our time. What has politics to say on these vital facts which underly the diplomacy and war of our time and of all times? What have we to say of the possibilities of enthroning intelligence where hatred, prejudice and passion now hold sway? Would it not be worth while for students of politics to set in motion a course of inquiry which technicians of other groups might perhaps be called upon to complete, or to cover with us in a large spirit of coöperation?

In these scattering and informal remarks I have covered a variety of topics in a fragmentary way, throwing out suggestions as becomes a puzzled searcher for truth, rather than presenting conclusions. But permit me to emphasize again the chief points I had hoped to develop, namely: the significance of the adequate equipment of the professional research man; the grave necessity of constant revision of our methods and processes; the desirability of more intimate coöperation with other social sciences and with the physical sciences; and finally, the urgent need of going back of external forms and descriptions to the recurring processes of politics, whose sequence we may some day hope to calculate and measure more accurately than we have thus far been able to do; the desirability of minute, thorough, patient, intensive studies of the detail of political phenomena, by many devoted investigators who will supplement keen observation with shrewd inference and open the way to a deeper and more scientific understanding of political relations.

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BOOK REVIEWS

EDITED BY W. B. MUNRO

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Contribution à la Théorie Générale de l'Etat spécialement d'après les Données fourniées par le Droit Constitutionnel français. Par R. CARRÉ DE MALBERG. Tome premier, 1920. Pp. xxxvi, 837. Tome deuxième. 1922. Pp. xiv, 638. Paris. Librairie de la Société du Recueil Sirey, Léon Tenin.

These two substantial volumes constitute installments of a monumental treatise on the general theory of the state, by Professor Carré de Malberg of the University of Strasbourg. In the first volume he considers the constituent elements of the state (with chapters on the theory of the personality of the state and the power of the state) and the functions of the state. In the second volume, he concludes his analysis of state functions with an extended discussion of the separation of powers; and, under the general heading of the organs of the state, considers contemporary theories of the source of the powers exercised by state organs, representative government, the office and rôle of the electorate, and the organization of the constituent power in France.

As the title of the work indicates, the author restricts himself mainly to a study of French theory, and deals with the legal and political doctrines of other states, only for purposes of comparison and illustration. As an exposition of French theory, his treatise will constitute the most elaborate and thorough-going study that has been made; and students of political science owe the author a debt of gratitude for a work of such scope and merit. It is to be hoped that the other volumes will appear in the same rapid succession as the second has followed the first.

In the first chapter, he emphasizes the unity of the state, and discusses the foundation of this unity and the origin of the state. In the second chapter, he maintains that sovereignty is incapable of legal limitation, but is subject to moral restrictions, self-imposed on the organs of the state by the law which creates them.

The functions of the state are classified under the three main categories of legislation, administration and jurisdiction, but discussing these in the light of the views of French and German writers, he distinguishes between formal and material functions. This distinction recognizes that what is in substance a legislative rule may be issued in the form of an administrative regulation.

Distinguishing several phases of the doctrine of the separation of powers, he holds: that the conception of a plurality of distinct powers is inconsistent with the essential unity of the state; that an organic separation of functions is impossible; that a complete independence of organs is impracticable; and that the equality of organs is legally impossible—there may well be a multiplicity of organs, but normally one will be preponderant. Thus in the parliamentary system, while nominally based on a dualism of powers, its institutions and tendencies lead to the preponderance of one of the two authorities. In the present system of French public law, he holds that the separation of powers has been replaced by a gradation of powers, in which the parliamentary chambers constitute the supreme organ; but that its power is also limited by the electorate.

In discussing the sources of the power of state organs, the author distinguishes between what he calls the "sovereignty of the people" and "national sovereignty." The first theory was that of Rousseau, which as the author interprets it, attributes to each individual a fraction of sovereign power. This theory which is rejected on various juridical grounds, is contrasted with the theory of positive French law, which locates the sovereign power in the nation, that is in the collectivity of citizens viewed as an indivisible unit. It does not rest in the electorate alone but in the whole body of citizens. Naturally, he does not share the opinion of Duguit that the "principle of national sovereignty is a fiction, undemonstrable and of no real value."

In his treatment of representative government, the author considers the current theories concerning the rôle of the representative according to French law. He emphatically rejects the theory of the *mandat impératif*, and holds that the deputy is not the agent of his immediate constituency and subject to their instructions, but is the representative of the nation, bound only by his own judgment and conscience, and independent of the electors to whom he owes his election. This has been the principle of French positive law since 1789. Nevertheless, he admits that in the evolution of the representative system in France the electors have come to exercise, in fact, an increasing influence and

control over the deputies. The French people are no longer content to play the *rôle effacé* to which the earlier constitutions limited them, to demand of a deputy that he regard himself as exclusively the representative of the nation is to demand the impossible, and a candidate who should present himself to the electors on such a platform would be defeated. The deputy therefore, has become in fact more or less the representative of the particular interests of his own immediate constitutency. Indeed it would not be going too far to say that the French deputy today regards himself as primarily the agent of the district which elects him; and it was largely to remedy this situation that the system of *scrutin de liste* was introduced in 1919. M. Carré de Malberg himself concludes that the representative system which has come to exist in France is contrary to that which the founders intended and that it is a "bastard form of government," consisting of a combination of that which the revolutionists created and of modern parliamentarism. As to the nature of the suffrage, he adopts the view that it is "successively" an individual right and an office (*fonction*), although he takes issue with Duguit who maintains that it can be both at the same time.

The second volume concludes with a discussion of the nature of the constituent power in France. The principle of national sovereignty, the author maintains, logically requires that the constituent power should be vested in a special organ, although the constitution of 1875, unlike its Republican prototypes, does not fully carry out this principle. In vesting the constituent power in a national assembly composed of the members of the legislative body, the authors of the present constitution adopted a compromise between the English system and the French practice before 1875. As to the somewhat subtle question whether the national assembly is a mere meeting of the Chamber of Deputies and the Senate or whether, as Duguit maintains, it is a new assembly absolutely distinct from the Parliament, the author adopts a middle view. Concerning the much controverted question whether the national assembly has an unlimited competence in respect to the revision of the constitution, he takes issue with Duguit who supports the theory of unrestricted competence. His own conclusion is, and it seems to the reviewer to be more in accord with the constitution, that the unlimited competence of the assembly is conditioned upon the separate wills of the chambers expressed in the resolutions convoking the meeting of the assembly.

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The American Philosophy of Government, Essays. By ALPHEUS HENRY SNOW. (New York: G. P. Putnam's Sons. 1921. Pp. 485.)

Whoever is responsible for having brought together this collection of essays by the late Alpheus Henry Snow, deserves the assurance that he did a very serviceable thing. While some of the papers were works of occasion, all reflect so philosophical an outlook and rest upon such solid foundations of learning as to possess much of permanent value, not only to the student of the law of nations, in which Mr. Snow was particularly interested, but to all students of American political ideas and institutions.

The title of the opening essay, "The American Philosophy of Government and its Effect on International Relations," sounds the keynote of several others of the papers, and, indeed, furnishes the volume as a whole with a unifying *leit motif*. Mr. Snow was thoroughly convinced of the feasibility, or better, the indispensability, of basing the international order, if it was to serve the cause of human liberty, upon the leading concepts of American political theory—federalism, the notion of the state as a corporation with limited powers, the correlative notion of a "higher law" and of fundamental rights safeguarded thereby, the doctrine of the separation of powers, and confidence in judicial processes; and generally he argued, that except so far as commonly accepted ideas of justice are available as a foundation for international organization, national freedom and independence should still be jealously conserved, and especially by those nations which believe in limited government and individual liberty.

As may be surmised, Mr. Snow did not regard the Covenant of the League of Nations with favor. It provided, he argued, no limitations or safeguards upon the exercise of power by the league; it bound member states to follow "advice" which in certain contingencies could amount to absolute commands; it defined aggression and wrongdoing purely in terms of warlike action, regardless of its purpose; it mingled all varieties of functions in a single body—in short, it sprang from the European concept of unlimited power and rejected the American idea of limited power. Indeed, he challenged the constitutional competence of the treaty-making body to "enter into a treaty of union having the effect to supersede in part the Constitution of the United States" (p. 306).

Of the non-controversial papers, the one tracing "The Development of the American Doctrine of Jurisdiction of Courts over States," the companion study entitled "Execution of Judgments in Jurist States," the essay on "The Position of the Judiciary in the United States," and that on "The Proposed Codification of International Law" are of chief value. In the last named, incidentally, is an outline of the entire subject of the international law of peace which might well furnish a basis for a course of lectures along quite novel lines.

In all respects the volume is a fitting memorial of its regretted author.

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The Spirit of the Common Law. By ROSCOE POUND. (Boston: The Marshall Jones Company. 1921. Pp. xv, 224.)

In these eight lectures, Dean Pound traces the ideas that have played a part in the development of the common law and outlines the emerging attitude of the twentieth century and its promise for the future. His picture of the past is a marvelously wrought intellectual tapestry made from the threads that dynasties of judges, jurists and philosophers have spun. Thus the spirit of the common law is found chiefly in the professions of its votaries. This tends to leave the impression that men actually were controlled by the abstractions and the absolutes that they chanted. Yet in the later lectures the author, who is as acute as he is learned, makes plain that in spite of professed devotion to fixed ideals and universal principles, the judges have felt their way, made compromises, and tested principles by their fruits. The jurists of today, he tells us, "call for a legal history which is to show us how the law of the past grew out of social, economic and psychological conditions, how it accommodated itself to them, and how far we may proceed upon that law as a basis, or in disregard of it, with well-grounded expectations of producing the results desired."

This is a large program. In these lectures, Dean Pound deals chiefly with the conditions that may be termed psychological or philosophical. He emphasizes their potency while he reveals their inadequacy. His historical retrospect is, not only a significant contribution to the history of legal and political theory, but a powerful lever in the advocacy of that newer attitude of which he is the leading exponent—the attitude which puts "the emphasis upon social interests" and which looks at the rules and premises of the legal system "in terms of the

concrete situation, not in terms of the abstract claims of abstract human beings." This attitude is fortunate in having for its leader a man of learning as well as of wisdom. This happy union gives these lectures a double value. They squelch the shallow railings of ignorant critics who would divorce the present from the past and they offer wise guidance to those who would build on the past and the present to make a better future.

THOMAS REED POWELL.

Columbia University.

Intervention in International Law. By ELLERY C. STOWELL. (Washington: John Byrne and Company. 1921. Pp. vi, 558.)

In a concise, but clear preface, Mr. Stowell gives us the objects of his investigation, which deals with some of the most important contemporary problems of international law. For instance, he tries to answer the difficult question as to when a state may be justified in employing force or the menace of force to influence the conduct of another state. In analyzing modern conditions, he constantly keeps in mind the ideals of democracy. From that latter point of view he arrives at the conclusion that selfish insistence or absolute independence of action of a state do not justify interference with a neighbor; no state, he says, shall unreasonably insist upon its rights or pursue its interests to the detriment of other states.

Unfortunately the domain of international relations is so full of old prejudices, perverted ideas, and moral conflicts, that the author sometimes finds it difficult to blaze a clear trail and leaves some questions unanswered, but this does not in any way detract from the good impression created by the reading of his book. The chief criticism one might make is the fact that the author in places treats his subject, especially the historical examples, at too great length. This is the case, for instance, with the Putumazo atrocities and the Polish insurrections; in reading the corresponding pages one might think the author were writing a history of Peru or of Poland.

The best parts of the book are the first two chapters, on "Interposition" and "International Police," though the latter title is unfortunately chosen and calls for special explanation. The author gives clear and acceptable definitions of redress, expiation and punishment; n some cases, however, the foreign names are hopelessly misspelled

(the Russian Ambassador Matvejev is quite unrecognizable; p. 28). Humanitarian intervention takes up the greatest part of chapter II and is most interestingly treated.

The author is quite right in emphasizing the conflict of ideas that could be found in former days between the theory of state sovereignty and independence and the principles of humanitarian intervention; he gives excellent examples of oppression, injustice, asylum and slave trade that repeatedly justified intervention and helped the latter to curb the selfishness of states. These pages will always remain a valuable contribution to the history of international relations. In one case only must we point out a glaring exception, standing in contradiction to the author's own humanitarian views and theories, namely his attempt to justify President Roosevelt's action in Panama; the arguments and assertions of Mr. Stowell are difficult to follow.

In the next chapter, on "Non-Interference," we find too much vagueness in some definitions, though this is really not the author's fault; the subject is so complex, so involved and some points are so disputable, that one could hardly expect clear-cut and dry definitions; the questions of mobilizations and concentrations, for instance, are so imponderable that it would seem quite impossible to compress them into juridical formulas. The same must be said of "Self-Preservation" and of the "Balance of Powers," where numerous disputable theories and statements are discussed by the author. The last paragraphs on conquest, treaty-rights and political action are very good.

On the whole the treatise is very interesting, stimulating and inspiring, will certainly take a permanent place in the literature of international law and will always remain a helpful source of information for students and specialists.

S. A. KORFF.

Washington, D. C.

International Law: Chiefly as Interpreted and Applied by the United States. By CHARLES CHENEY HYDE. Two volumes. (Boston: Little, Brown and Company. 1922. Vol. I, pp. lix, 832; Vol. II, pp. 924.)

The title indicates Professor Hyde's purpose, to limit his treatment of the subject of international law somewhat as did Professor Moore in basing his *Digest of International Law* chiefly upon American material. Professor Hyde has no intention, however, to maintain, as some writers

have endeavored to do, that there is an American international law, but in these volumes he aims rather to give the American material a "thorough examination and critical analysis." This is one of the peculiarly valuable features of Professor Hyde's work. He says (I, sec. 257): "While the individual State may not lawfully by legislative enactment modify the requirements of international law it may without impropriety express its own view as to what they demand, and in so doing announce a rule for the guidance of the courts."

Professor Hyde's presentation of the subject has been with a view to impartial elucidation of each topic treated, in order that his criticisms, favorable or unfavorable, may be tested by the reader. The recent activities of the League of Nations and of other new agencies in international relations are presented in this manner throughout the two volumes.

The source material indicated in the footnotes and elsewhere is always ample and recent and, while chiefly, is by no means always American. The international bearing of recent events in which the United States has been concerned, such as the Tampico incident, 1914; the pursuit of Villa, 1916; the relations of the Dominican Republic; the late doctrines of contraband, freedom of speech and the like are considered. In some of the more abstract discussions, such as that on the subject of servitudes, Professor Hyde shows where certain writers have failed in a clear understanding of the mutual and general obligations of states. The application of the Treaty of Versailles with its many ramifications is set forth. More than usual attention is given to conflicts arising in regard to the rights and duties of aliens and alien claims. Consideration is also given to the subject of reparations, which has grown in importance through the reluctance to use the word indemnities.

Events and practices of the World War are cited in many instances as showing the strain upon existing treaties, the extension of belligerent rights, and the introduction of other new problems.

In a work of this extent and detail, where a writer sets forth clearly his opinions, there will necessarily be views expressed upon which not all will agree. Professor Hyde has not endeavored to conceal this fact but has stated his own opinion and has endeavored to call attention to the divergence from the opinion of others and sometimes from the American practice.

Serious study, wide research and carefully reasoned conclusions are evident throughout this work, and all students are under deep obli-

gation to Professor Hyde for this scholarly contribution to the field of international law.

GEORGE GRAFTON WILSON.

Harvard University.

Leading American Treaties. By CHARLES E. HILL. (New York: The Macmillan Company. 1922. Pp. 399.)

Fifteen of the leading American treaties are examined in detail in this volume; their historical setting is presented, and their chief provisions analyzed. References in the text are for the most part to original sources, but each chapter is supplemented with a bibliography in which secondary sources as well as original documents are given. American state papers are freely drawn upon, as well as the annals of Congress, congressional documents, and diplomatic memoirs.

It is of interest to note how many questions of international law are interwoven with the provisions of the treaties discussed. A very practical and concrete, if somewhat restricted, course on international law might be given on the issues involved in these treaties. The problem of premature recognition of independence finds expression in the treaties with France in 1778; the problem of servitudes figures in the treaties of 1783 and 1818; the problem of the determination of boundaries, the rights of commerce, and belligerent interference with neutral trade, are issues of the Jay treaty of 1794; the right of succession might be discussed in connection with the Louisiana Purchase; neutral rights against belligerents are illustrated by the events leading up to the treaty of 1814; the character of occupation as a title to territory is seen in the treaty of 1842; belligerent rights against neutrals figure in the treaty of 1871; while problems of intervention, of international servitudes, and of the technical interpretation of treaty agreements are illustrated in the Panama Canal treaties.

While it might, perhaps, be wished that greater stress had been laid upon these points of law in the discussion of the various treaties, the student of diplomacy and international procedure will welcome in the present volume the details given in regard to the steps in the negotiation of the treaties and the practical results accomplished by them. The work should prove useful not only as supplementary reading in courses on general American history where source material is not available, but it should be of special help in the courses now being widely given in the diplomatic history of the United States.

C. G. FENWICK.

Bryn Mawr College.

China, The United States and the Anglo-Japanese Alliance. By G. Zay Wood. (New York: Fleming H. Revell Company. 1921. Pp. 176.)

The Twenty-one Demands: Japan versus China. By G. Zay Wood. (New York: Fleming H. Revell Company. 1921. Pp. 178).

The Chino-Japanese Treaties of May 25th, 1915. By G. Zay Wood. (New York: Fleming H. Revell Company. 1921. Pp. 151).

Whatever the Washington Conference may have accomplished or may have failed to accomplish toward an eventual solution of Pacific and Far Eastern matters, the appearance of these questions on the agenda created a sudden popular demand for information as to the nature and origin of such problems, and the extent to which they affected or might affect American interests. Mr. Wood's three volumes are, in part, an attempt to meet this demand; for the rest, they are a presentation of China's case, especially as against Japan, for the restoration of her sovereign rights.

In regard to the Anglo-Japanese Alliance, it is argued that the pact has, in the past, served as a cloak to repeated attacks upon China's sovereignty and territorial integrity, as well as to violations of the open door policy; that the two signatory powers gratuitously assumed the task of protecting for the other nations their treaty rights in China, thus arrogating to themselves unwarranted authority; and, finally, that the alliance has been, for twenty years, an influence for war rather than for peace in the Far East.

The other two volumes deal with the sequence of events culminating in the treaties and supplementary notes of May 25, 1915. There may have been good reasons for discussing the negotiations and the treaties under separate titles, but this division of what is essentially one subject has resulted in sharing between two appendices material which would have been much more useful in one.

Although the books may influence popular opinion and help to satisfy the momentary demand for information as to recent events in the Far East, they can hardly be considered as a presentation of new material. Quotation marks are frequently employed with no indication as to the source quoted; where references are given they are usually to newspaper reports and opinions; and, in one instance (*Anglo-Japanese Alliance*, p. 26), an ill-advised confidence in the reliability of a news-

paper interview has resulted in a footnote containing a glaringly inaccurate explanation as to the origin of the alliance.

G. NYE STEIGER.

Simmons College.

The Struggle for Power in Europe, 1917–1921. By Dr. L. HADEN GUEST. (London: Hodder and Stoughton. 1921. Pp. 318.)

The author has given us a survey deserving, on the whole, careful reading. He treats of economic, social, and political conditions in Russia and in certain countries of Central and Southeastern Europe (one wonders why Bulgaria is included since Jugoslavia is not) from the point of view of a physician with a special sympathy for downtrodden people of all nations. On this account, it may not be strange that in regard to certain political and international relations, the author is uncertain and vague, that for instance he states that the boundaries of Hungary ought to be changed "into closer accord with the rights and necessities of all people concerned" (p. 209) without specifying which of her boundaries he means or giving reasons for an adjustment or instances of any infringement of her rights.

He sees in the rise of the peasants and the working people of the towns the two forces which are to bring a real democracy into being, though for this there is urgent need for peace, education, adequate feeding, and, as leaders, men who are scientifically trained. Progress along these lines he finds most pronounced in Czechoslovakia and Bulgaria. His solution for other difficulties lies in an economic federation of European states which will not interfere with their independent political life, and he bases the belief that this may come about upon the existence of trade unions, relief organizations, and the League of Nations. The three chapters devoted to general observations are more definite and usefully analytical than those dealing with the separate countries (Russia, Poland, "Tcheko"-Slovakia, Austria, Hungary, Roumania, and Bulgaria), since the latter tend to gossip and develop sundry ideas unevenly.

The book has a detailed table of contents and two maps, one of the vegetation and the other of the manufactures of Europe. There is no index.

ARTHUR I. ANDREWS.

Tufts College.

Mexico and its Reconstruction. By CHESTER LLOYD JONES. (New York: D. Appleton and Company. 1921. Pp. x, 330.)

In the judgment of the reviewer, Dr. Jones has done the best single book dealing with the Mexican problem in general. It is for the serious-minded reader and is not intended to be a popular message. He has given us a clear statement of what the real Mexican problem is—if, indeed, there is such a thing as a Mexican problem.

In a phrase, the Mexican state is an anomalous one and exists by virtue of the forbearance of the greater nations. The country is lacking in nearly all the essential elements which go to make up a real state in the true modern significance. Seventy-five per cent of its people belong in the period of the Phoenician and the nomadic free-booter. Dr. Jones has shown characteristically enough that only the smallest possible percentage of Mexicans is qualified to support a modern political state. The inertness of the majority of the population, mostly Indian, is emphasized, as well as the fickleness and dislike of work on the part of the mixed bloods; and finally the rivalries and lack of coöperation existing among the members of the topmost layer is pictured—all accounting for the possession by the Mexicans of the outline of a democracy along republican lines, and its degeneration into single executive control, or a paternalism which reached its height under Diaz.

The author's discussion of "Loans," "Claims," "Currency in the Banks" and "Public Income and Expenditure" comprises an important section of the book. He has given the essential facts, and but for the statement (note 2, p. 67) that the figures were in Mexican gold, one could not take exception to his data. As a matter of fact, the Mexican peso until 1905 had legally the intrinsic value of the American dollar, but it was subject of course to fluctuations in the markets.

One of the best sections of the book is undoubtedly that dealing with the people as a whole. The study of the labor problem is a clear exposition and at the same time a dismal forecast. Another important section of the book, and one upon which Dr. Jones is by right entitled to speak with authority, is that of "Industry" and "Commerce," and the two chapters dealing particularly with "Foreign Trade" have unusual merit. The whole story is told graphically and briefly. His discussion of "Foreigners' Property" is not so satisfactory; as a matter of fact no discussion of foreign investments could at this time be satisfactory, because the data is so indeterminate that more or less specula-

tion must be indulged in. His estimate as to losses and as to the investments of foreigners are in both cases, in our judgment, conservative (p. 247).

The legal difficulties in the oil situation are gone into somewhat elaborately, and the reader can gather a good understanding of this problem, which has been agitating international relations probably more than any other single factor. Considerable space is devoted to "Government" and "Elections," and divers other problems are considered, all emphasizing the fundamental weaknesses in character of the majority of the inhabitants of Mexico, and making the case of the author appear that no independent improvements may be expected for a long period of time. Dr. Jones does not advocate outright any particular form of action which should be taken, nor does he prescribe anything at all, but he does insist on an adequate understanding with this country, and in view of all that he has written his inference is plain.

WALTER F. MCCALEB.

Cleveland, Ohio.

The Corner-Stone of Philippine Independence. A Narrative of Seven Years. By FRANCIS BURTON HARRISON. (New York: The Century Company. 1922. Pp. viii, 343.)

Here is the record of an American "administrator in the making." It would be too much, perhaps, to expect such a book to make an absolutely impartial appraisal of the political acts of its author. But throughout, the reader is struck by the fairness of ex-Governor General Harrison to the opponents of his régime and by his readiness to admit the failure of the program of Filipinization, notably in regard to legislative procedure (p. 220). As a statement of faith in the capacity of the Filipino for self-government, the book comes with refreshing freedom from the dogma of the mental and moral inferiority of the "backward peoples."

Two important political reforms were carried out during his administration. The commission became virtually a cabinet with a majority of Filipino members. Under the terms of the Jones Act of 1916, an elective Senate and House, with appointive representation for the non-Christian Moros and hill tribes, were created with full legislative responsibility for the islands. At the same time Filipinos largely displaced the American administrative personnel—the percentage of Americans dropped from twenty-eight to four.

Mr. Harrison traces briefly the pacification of the Moros and hill tribes, the development of internal improvements and resources, the constantly impeded attempts of the Filipinos to organize an overseas unit during the war, and their enthusiasm for and support of the American cause. The educational system has been extended in seven years to reach double the number of children, now over a million regularly attending school. The unifying force of the schools he considers the essential guarantee against political disintegration under complete independence. He is critical of the continuance of a military force in the islands (though high in praise of many of the officers who served there during his term) mainly for two reasons—the suspicions as to our motives aroused among the Filipinos and the potential friction and non-coöperation between the military and civil governments over matters of policy. Not the least suggestive part of the book is his discussion of Filipino trust in America due to our past policy and the significant influence of that policy on the colonial administrations in neighboring states.

The sympathetic approach to the most delicate problem of modern politics—what to do with "the white man's burden" and how to turn it back to its original bearers—which permeates the book, is a valuable contribution to our present thinking on colonial policy quite apart from any political differences of opinion.

PHILLIPS BRADLEY.

Wellesley College.

State and Municipal Government in the United States. By EVERETT KIMBALL. (Boston: Ginn and Company. 1922. Pp. x, 581.)

Fresh interest in the study of American government has been generated by the events of recent years and has stimulated anew the effort to provide satisfactory textbooks. In his work on the *National Government of the United States* Professor Kimball gave us one of the most serious and deserving products of this activity. In his second volume he completes the survey previously inaugurated. Certain features stand out in this treatment of the field of local government. State government is set forth as a phase of local government. In this particular the author has clearly grasped the tendencies of our constitutional history. County, town and other forms of local rural government are treated as manifestations of state activity, except for a scant forty

pages devoted to their rôle as channels for local self-government. One wonders whether this concession to limitations of space and the centralizing forces in state administration may not prove premature. There is a deal of vitality still remaining in some of these seeming relics of an earlier day.

Municipal government claims two-fifths of the book, an assignment that will seem disproportionate to many. It is even less easy to be reconciled to such a distribution since the state constitution is given a scant nineteen pages, and municipal administration receives five chapters as contrasted with but three devoted to state administration.

In the main, the author is content to present material that is already familiar, the only considerable body of new matter being selections and additions of developments transpiring during the years intervening since prior works were printed. There is admirable compression and accuracy in the statement of data, old and new, and in the conclusions. Indeed, one misses the discussion and citations which characterized Mr. Kimball's volume on the national government, perhaps to an undue extent. In this particular the book creates a problem for those who attempt to use it as a continuation text following the other work. The treatment is so much more elementary that it invites a decided lowering of the effort expended upon the subject unless suitable supplementary material is provided.

Professor Kimball's book will be valuable in courses which attempt to cover American national, state and local government in one year, and particularly so in sections of the country where the process of urbanization has become the dominant feature of social and political organization. It will be a useful work in any introduction to local government in this country. The apparatus with which the book is provided is excellent—table of contents, marginal and topical headings, and index. A bibliography might well have been added and might have prevented the curious omission of any reference to Kettleborough's collection of state constitutions (1918), the student being left with knowledge of Thorpe's collection (1909) only, and the volumes of the *American Yearbook*. Some of the chapters, such as that dealing with the judicial system, excel any other brief treatments available. On the soundness of the author's venture in redistribution one may suspend judgment. In a work which has so many merits one wishes there were more evidences of independent research and the quality of freshness which it alone can impart to a textbook.

RUSSELL M. STORY.

University of Illinois.

BRIEFER NOTICES

One of the more recent public addresses of the late Lord Bryce has been preserved in permanent form in a small book of about a hundred pages, published by the Macmillan Company, entitled *The Study of American History*. This is the inaugural address delivered by Lord Bryce as the first occupant of the Sir George Watson Chair of American History, Literature and Institutions, a lectureship established for the purpose of creating in Great Britain "a wider knowledge of America and of its history, literature, and political, educational and social institutions." The book contains a brilliant synopsis of American history and of Anglo-American relations from the end of the seventeenth century and closes with a plea for "a spirit of goodwill which may replace international hatreds by a sense of common interests and a vision of the blessings concord may bring." In more ways than one this small volume serves as an introduction to some of the points brought out in Lord Bryce's last book, *International Relations*, which will be reviewed in the next issue of this journal.

The Minnesota Historical Society has edited the first volume of *A History of Minnesota* by William Watts Folwell (pp. xvii, 533). The book deals with a period of about two hundred years, from the coming of the first white men during the seventeenth century to the admission of the territory as a state in 1857. The opening chapters trace the onward march of the French fur traders, explorers and missionaries; and then follows an account of occupation and settlement by the Americans, the organization and development of the territorial government, the driving back of the Indians, and the framing of the first constitution for the new state. No better equipped person could have been found for this task than Dr. Folwell, whose long service as president of the state university, professor of political science and public servant has given him both the training and experience necessary for the writing of a comprehensive and critical history of Minnesota. There is scarcely a dull or uninteresting page in the entire volume and the work should appeal not only to residents of Minnesota but to all who are interested in the early history of the west.

Thirty authors have coöperated in writing the "inquiry" which is published by Messrs. Harcourt, Brace and Company under the title of *Civilization in the United States* (p. 577). The book embodies an attempt, by a group of "more or less kindred minds" to "sum up the

larger aspects of American life and culture, and point out the defects as well as the virtues of American civilization." Of outstanding interest to students of political science are the essays on "The City" by Lewis Mumford, on "Politics" by H. L. Mencken, and on "The Law" by Zechariah Chafee, Jr.

Dr. Isaiah Bowman's volume on *The New World* (World Book Company, pp. 632) is a notable contribution to the materials available for the study of political geography. It deals with the major and minor problems of the world in their geographical setting and there are indeed a great many of them at the present time. There is a wealth of useful data in this volume, and all of it appears to be presented with due respect to the importance of accuracy. The author has no thesis to substantiate, unless it be the proposition that Americans have paid too little attention to these problems in the past and ought to know more about them. The volume is abundantly supplied with maps and there is a well-chosen bibliography.

Problems in Pan Americanism, by Samuel Guy Inman (George H. Doran Company, pp. xii, 415), is a discussion of the relations, racial, economic, and political between the United States and the Latin-American republics. The author has derived his material not only from the literature on the subject but also from first hand study during fifteen years of residence and travel among South Americans. Consequently the narrative is enlivened by frequent references to personal experiences and observations. The first six chapters present an account of the social, political, economic and religious problems of Latin America, and trace the history of the early efforts toward friendship between the two continents, the events leading up to the Monroe Doctrine and what the Spanish Americans think of this doctrine today. In the later chapters the reader will find an account of such problems as the effects of foreign investments upon the political life of Latin America; the reasons for disunity among the American nations during the World War; the attitude toward the League of Nations; what our relations with Mexico have to do with the other southern republics; why Latin Americans are suspicious of North Americans; and what can be done to build up Inter-American friendship. There is nothing particularly new in the material presented, but the subject is treated from a somewhat different angle, and there is a most useful list of references for further information at the close of each chapter and a general bibli-

ography at the end of the book, both of which contain many new references to books and articles by Latin-American writers and public men.

Any one desiring a readable account of current problems in the great Far Eastern Republic will find much of interest and importance in *China's Place in the Sun*, by Stanley High (The Macmillan Company, pp. xxix, 212). Mr. High, who has traveled extensively through China, has built his book around the thesis that the people of the United States "are destined to be drawn into increasing commercial contact with China, and China potentially powerful in human and material resources, is destined by the development of these potentialities, for a place of world leadership." The greater part of the book deals with the movements now on foot which indicate that China is already being stirred by new aspirations and is undergoing an industrial and intellectual renaissance which will ultimately win for her "a place in the sun." Former Ambassador Reinsch has written an introduction to the book confirming Mr. High's opinions.

Professor Meredith Atkinson, of the University of Melbourne, has done a helpful piece of work in editing a book on *Australia* (Macmillan, pp. vi, 518). The volume contains a series of economic and political studies written by a dozen or so representative authorities, such as Professor Atkinson and Jethro Brown, who have had many years of experience with life in the commonwealth and can therefore be regarded as experts in their various subjects. Among the more important articles are those on "The Political Systems of Australia," "The Australian Labor Movement," "Judicial Regulation of Industrial Conditions," "Education in Australia," and the "White Australia Policy."

The lectures delivered at the Lowell Institute by Dr. Talcott Williams in 1920 have been published by Messrs. Doubleday, Page and Company under the title, *Turkey, A World Problem of Today* (pp. 336). The book presents a direct plea for the acceptance of a Turkish mandate by the United States.

Commander F. L. Robertson of the British Royal Navy could not have selected a more opportune time for the publication of a volume on *The Evolution of Naval Armament* (Dutton and Company, pp. vi, 307). The author presents in popular language the "materialistic side of

naval history" by tracing the progress of the three principal elements of armament ship, gun and engine—from the days of the early sailing ship to those of the ironclad. The book is primarily concerned with the evolution of armaments in the British Navy, but some attention is paid to French and American developments. The history is carried in detail only to 1880, the year in which the modern British navy had its beginning, but a short section has been added at the very end of the volume setting forth the effect of the torpedo and torpedo craft upon the evolution of the ironclad. The material is presented in a readable and interesting manner and the various types of craft and armament are made clear by a number of carefully selected illustrations.

The A. B. C's of Disarmament and the Pacific Problems, by Arthur Bullard, is published by the Macmillan Company (pp. 122). It is a discussion of the vital interests of America, Great Britain and Japan in the Pacific regions.

The fourth and fifth volumes of *A History of the Peace Conference of Paris*, under the editorship of H. W. V. Temperley, have been published by Henry Frowde under the auspices of the Institute of International Affairs. These volumes conclude the series. Volume IV deals with the collapse of the Central Powers, the Armistice, and the preliminaries of peace, also with the treaties of Trianon and Neuilly, and with what the editor calls "The Liberation of the New Nationalities." Volume V is devoted to the topic of economic reconstruction in the treaties and to the provisions affecting the rights of minorities. Many useful documents are appended, including the texts of the Austrian, Bulgarian and Hungarian treaties. The entire series forms a reference work of very great value.

Following his earlier book on the peace negotiations, Mr. Robert Lansing has published a volume on *The Big Four and Others of the Peace Conference* (Houghton Mifflin Co., pp. 213). The book contains portrayals of the dominating personalities of the conference, four full portraits and four "impressions." The former include Clémenceau, Wilson, Lloyd-George and Orlando; the latter Venezelos, Emir Feisal, Botha and Paderewski. Mr. Lansing's exceptional qualifications for sketching the characteristics of these various notables will not be denied, and his attitude on the whole is restrained, although not always non-partisan. The book makes good reading.

Colonel Repington's new diary, "*After the War*" (Houghton Mifflin Company, pp. xiv, 477), tells of his travels during the year 1921. He visits Italy, Greece, Austria, Hungary, Czechoslovakia, France, Germany, Roumania, Bulgaria and America, and hobnobs with the high and mighty in all except the last. In America all he gets is a handshake from President Harding, but in spite of his discovery "that the American Court is the most exclusive in the world," Colonel Repington had a good time at the conference and left this country only worried because he could not find out when a treaty was not a treaty. The whole book is full of political gossip, much of it interesting, but the eternal reparation squabbles are rather tiresome. The parts on Greece, Roumania and Bulgaria are perhaps the best, because little has been written about the situations there. This political gossip is livened by bits of personal gossip in true Colonel Repington style.

Sir William Robertson's *From Private to Field Marshall* (Houghton Mifflin Company, pp. 396), is a full and frank autobiography of a unique military career. During the years intervening between 1877 and the World War, the author made his way from a recruit in the 16th Lancers to the head of the Imperial General Staff. The first half of the book tells the story of this climb in breezy narrative. The rest of the book deals with Sir William's work in the World War and particularly with the operations of the British forces.

In the introduction to his book *Prime Ministers and Presidents* (George H. Doran Company, pp. 314), Mr. Charles Hitchcock Sherrill promises to introduce to the reader fifteen prime ministers and four presidents in Europe, several premiers of the British dominions and some of the distinguished statesmen of Japan. Contrary to the method of the authors of the "Mirrors," Mr. Sherrill shows us the qualities of these men which made them leaders instead of emphasizing their faults and leaving us wondering why on earth they are allowed to lead. Besides telling of the personality of these statesmen, the author gives us a clear idea of the problems which they have to meet. The book as a whole is sensible, polite and entertaining, just what one would expect from an experienced diplomat.

G. R. Stirling Taylor's *Modern English Statesmen* (R. M. McBride and Company, pp. 267) plays hob with the orthodox English biographies. The book is a "revaluation" of six prominent British states-

men—Cromwell, Walpole, the two Pitts, Burke and Beaconsfield. In every case there is a new interpretation of old facts, with a liberal use of both acid and whitewash thrown in. The essays on Walpole and Disraeli are particularly aggressive in their attack upon old notions. The introductory chapter on "Statesmen and Statesmanship" is exceedingly well done.

In a series of twenty-nine sketches under the title *Portraits of the Nineties* (Scribners, pp. 319), the English biographer, E. T. Raymond, gives his readers a more than passing acquaintance with the great figures of British public life during the closing decade of the last century. They range from Gladstone to Henry M. Stanley, and on the whole the brief biographies are written in a judicious spirit. The reader who is familiar with Mr. Raymond's earlier writings need only be told that this volume suffers nothing by comparison; it is gossipy, anecdotal and contains wit as well as wisdom in its pages. His galaxy is one worth writing about.

The Masques of Ottawa, by Domino (The Macmillan Company, pp. 283), is of the same cult as *The Mirrors of Downing Street*, but its anonymous author is in more lenient humor. Pen portraits of two dozen Canadian notables, past and present, are given. The style is rambling and rather labored.

Dr. Lyman Abbott's *Silhouettes of My Contemporaries* (Doubleday, Page and Company, pp 361) contains intimate sketches of about twenty Americans, all of whom were prominent in their day, but some of whom have already faded from the public recollection. There are silhouettes in prose of P. T. Barnum, John B. Gough, Daniel Bliss and others, all set before us in Dr. Abbott's discriminating but kindly way.

Under the title *My Brother, Theodore Roosevelt*, an intimate biography by Mrs. Corinne Roosevelt Robinson has been published by Messrs. Charles Scribner's Sons (pp. 365). The author disclaims the intent to give her readers either a biography or a political history, but she has succeeded in providing both. The book gives a clear portrayal of many things which students of the Roosevelt era will find useful in days to come. The man and his times will be easier to interpret by reason of these intimate reminiscences.

Another Roosevelt book, written *con amore* by a Harvard classmate, is Bradley Gilman's *Roosevelt, The Happy Warrior* (Little, Brown and Company, pp. 376). It is an attempt to interpret Roosevelt "by his words and deeds." Although the book contains little that is new, it is written from a new angle and is interesting throughout.

"I have known nearly all the marked men of my time," said the versatile Tallyrand, "but have never known one equal to Hamilton." Mr. Arthur H. Vandenberg's volume on *The Greatest American* (Putnam's, pp. 353) is a biography of Alexander Hamilton. Besides a sketch of his life and work, however, the book includes a "symposium of opinions by distinguished Americans"—a considerable list of them. There is a long chapter on Hamilton's contributions to *The Federalist* with copious quotations.

An entertaining volume of personal reminiscences by the Princess Cantacuzene, *My Life Here and There* (pp. 322), is published by Messrs. Charles Scribner's Sons. The book deals with America in the eighties, Austria in the nineties, and Russia in the years preceding the World War. The picture of court life and intrigue in Petrograd in the days before the Revolution is especially vivid.

Mrs. Philip Snowden has recently published, through Messrs. George H. Doran Company, a volume which deals with her recent travels in various countries. The book is entitled *A Political Pilgrim in Europe* (pp. 284). It contains much interesting gossip concerning conditions and personalities in all parts of the Old Continent. The book is written with unusual descriptive ability.

The Macmillan Company has published a second edition of the *General Theory of Law* (pp. xxviii, 524), by N. M. Korkunov, late professor of public law at the University of St. Petersburg, the translator of which is W. G. Hastings, dean of the University of Nebraska Law School. The book is merely a reprint of the first edition, but occasion has been taken to correct a few obvious typographical errors which appeared in the earlier work. The fact that the original edition which was published in 1909 has been exhausted seems to have justified the translation of this scholarly treatise and to indicate its lasting value to legal students.

The Law in Business Problems, by Lincoln F. Schaub and Nathan Isaacs (Macmillan, pp. 821), is a presentation of the rules of law in their relation to modern business. The book contains not only a statement of the rules but numerous representative cases in elucidation of the rules. The editorial text diminishes as the book proceeds and the student is ultimately thrown very largely upon his own resources in working out the principles from the cases. This is an excellent method and the book will be found well fitted for use in collegiate courses relating to the subject.

Practical Law Made Plain is a little volume by Judson S. West, a justice of the Kansas supreme court, published by Edward Valentine Mitchell of Hartford, Conn. The writer undertakes, in a brisk, keen and humorous way, to tell "what the average person should know of law." It is simple diet, this intellectual repast of one hundred and two pages, but well worth reading for the drollery that it contains.

A manual on *Wills, Estates and Trusts* (in two volumes), by Messrs. Conyngton, Knapp and Pinkerton has been issued by the Ronald Press. The purpose is to provide a working manual for executors, administrators and trustees. The two volumes deal in a concise but adequate way with such matters as the transfer of property, the administration of estates, the operation of inheritance tax laws, the management of trust funds and the elements of trust accounting. They form a very useful addition to the literature of this general subject.

A noteworthy contribution to the literature of prison reform is Louis N. Robinson's *Penology in the United States* (John C. Winston Company, pp. 844). Unlike most other writers on this subject, Dr. Robinson does not confine himself to institutions of punishment, but deals generously with the various agencies which society has provided for dealing with offenders prior to their conviction. While the book is primarily intended for college students of social institutions, it offers the general public a means of becoming acquainted with an important part of our social mechanism. The book maintains the high standard set by the author's previous volumes.

Professor Fetter, of Princeton University, has revised in a most thorough fashion his textbook on *Modern Economic Problems* (The Century Company, pp. 611), which first appeared in 1916. This new

edition is something more than an attempt to bring statements of fact and figures down to date; parts of each chapter have been rewritten with reference to events since 1916 and several new chapters have been added in the parts on money, insurance, transportation and socialism. Another new feature is the list of references at the end of each chapter.

The Trust Problem in the United States, by Eliot Jones (Macmillan, pp. 598), is a comprehensive study of "those combinations that have (or had) monopoly power." It presents an account of the early devices employed to restrain competition, outlines the modern trust movement and describes a number of representative trusts. Considerable attention is given to anti-trust legislation and judicial proceedings.

One of three important books on various phases of the labor problem which have appeared during recent months, is Frank Tannenbaum's volume on *The Labor Movement* (Putnam's, pp. 259). The author speaks of his book as "neither a prophecy nor a religion," but an "analysis of the labor movement." In keeping with his general purpose, which is to write a description, Mr. Tannenbaum takes up such important topics as the educational function of the labor movement, its conservative function and its relation to existing industrial government. The book is well written and interesting.

What's What in the Labor Movement, by Waldo R. Browne (Huebsch, pp. 578), is a glossary or cyclopedia of labor affairs. Alphabetical in arrangement, it lists and defines all the terms used in labor discussions. Theories are briefly explained, organizations are described and expressions are defined. It is a highly useful reference book.

The International Protection of Labor, by Boutelle E. Lowe, is published by the Macmillan Company (pp. 439). Its purpose is to describe the movement for international labor legislation, to present the labor agreements which have resulted therefrom and to indicate what the United States can do to promote the cause. The book is rich in its reprints of original documents and contains an exhaustive bibliography.

The Economics of Socialism, by H. M. Hyndman (Small, Maynard and Company, pp. 286), is an exposition of Marxian ideas for the benefit

of those who find the logic of Marx too difficult. Chapters are devoted to such topics as value, rent, interest, wages, and "the final futility of final utility." Mr. Hyndman confesses that not all the trouble arises from the heavy style in which Marx always wrote; "his thoughts themselves are difficult of comprehension." The present books sets forth these thoughts in simpler language and with a new orientation.

A criticism of *Karl Marx on Value* (pp. 52) by J. W. Scott, has been published by Messrs. A. & C. Black.

A posthumous volume by Arthur Jerome Eddy, entitled *Property* has come from the press of Messrs. A. C. McClurg and Company (pp. 254). It is a book along much the same lines as the author's *New Competition;* its main plea is for an enlargement and strengthening of the competitive system.

The Organization of the Boot and Shoe Industry in Massachusetts before 1875, by Blanche Evans Hazard (Harvard University Press, pp. 293) is a historical survey of an important New England industry, based upon a careful study of town records, parish registers, account books, newspapers and other first hand material. It is a highly useful contribution to American economic history.

Professor John Lewis Gilpin's new volume on *Poverty and Dependency* (pp. 707) is published by the Century Company. It is an exhaustive discussion with adequate attention to the historical as well as to the present-day aspects of the problem. Although primarily intended as a college text, the book will undoubtedly prove of service to social workers everywhere by reason of its thoroughness and its clarity of presentation.

The Elements of Social Science by R. M. MacIver, associate professor of political economy at the University of Toronto (E. P. Dutton and Company, pp. vi, 186), discusses the structure of society and traces its evolution in a scholarly manner. The author's main theme is that "society is an infinitely interwoven series of relationships, issuing from the wills and purposes of beings who realize their likeness and their interdependence, in a word their community. It is, therefore, in the first place a state or quality of mind, not a mere means or agency for the comfort or convenience of the beings so minded" (p. 3).

The University of Chicago Press has published an *Introduction to the Science of Sociology* (pp. 1040) by Robert E. Park and Ernest W. Burgess. It is a collection of readings on the subject drawn from a wide range of sources and covering a broad field; but the materials are so skilfully chosen and put together that the volume is to all intents a systematic treatise. Each chapter is made up of four parts: (a) an introduction (usually written by the authors), (b) a selected discussion, (c) a list of topics and problems for discussion or investigation, and, (d) a bibliography. The bibliographical apparatus is extensive and valuable. Some of the chapters are long,—virtually small monographs. Teachers of sociology will find the book to be of unusual value.

The Macmillan Company has brought out a new and greatly revised edition of Professor E. R. A. Seligman's *Essays in Taxation* (pp. 806). Originally published in 1895, this book has now run through nine editions. Five new chapters are added in the latest issue, three of them dealing with war taxes and loans.

The same publishers have executed a remarkable feat of bookmaking by the publication of *The Outline of History* by H. G. Wells in a single volume (pp. 1171). By the use of light paper the book has been kept within convenient size; it is no bulkier than some commonly-used college textbooks.

A considerable portion of Lewis Einstein's *Tudor Ideals* (Harcourt, Brace and Company, pp. 367) deals with various aspects of English government during the sixteenth century. There are enlightening chapters on "Office and Corruption," "Political Morality," "Public Opinion" and so on. The spirit of the sixteenth century is well interpreted. To weave together the multiple threads of dynastic and parliamentary intrigue has not been an easy task, but Mr. Einstein has done it with great skill. It is a rather drab fabric that the author produces as the result of his careful research; at the same time he has put as much brightness upon it as fidelity to the truth would permit. In every way the book meets exacting demands; it is scholarly, suggestive and interesting.

The caption *Twenty Years* (by Cyril Abington, Clarendon Press, pp. 207) gives no indication that here is an interesting and scholarly volume on the development of the party system during the two decades

1815–1835. Some of its chapters contain material which no careful student of nineteenth-century English politics can afford to overlook. Considerable attention is given to the Liverpool Ministry and to the party aspects of the first Reform Act. The author is headmaster of Eton.

A new *History of Rome to 565 A.D.*, by Professor Arthur E. R. Boak of the University of Michigan, is published by the Macmillan Company (pp. 444). It is intended to meet the needs of introductory college courses in Roman history.

Dr. Kenneth Colegrove's *American Citizens and their Government* (The Abingdon Press, pp. 333) aims to present in brief compass a general view of American government. Neither in plan nor in substance does the book break new ground; it is merely a restatement, in rather elementary form, of the things found in college textbooks. There are some references at the end of each chapter, chiefly to books of the same sort.

The Yale University Press has issued a new edition of S. Miles Bouton's *And the Kaiser Abdicates* (pp. 332). Appended is an English translation of the new German constitution and a chapter in explanation of it. The volume gives a full narration of what happened in Germany during the days preceding the *debacle*.

Under the title *The Rational Good* (Henry Holt and Company pp. 237), Professor L. T. Hobhouse has put together a series of chapters in amplification of his earlier book on *Morals in Evolution*.

RECENT PUBLICATIONS OF POLITICAL INTEREST

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CLARENCE A. BERDAHL

University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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